

THE
GENERAL CLAUSES ACT, 1897
(X OF 1897)

WITH NOTES AND APPENDICES.



PREFACE

THE second annotated edition of the General Clauses Act, 1897, has been exhausted and on account of several amendments of the Act has become out of date. A new edition on the same lines as its predecessors is now issued. It contains critical and historical notes which, it is hoped, may be of use to those concerned with Indian legislation.

The two appendices which were added to the second edition by the late Mr M. D. Chalmers, formerly Law Member of the Viceroy's Council, have been retained and brought up to date. The first reproduces a note reviewing the history and present position of the Indian Statute Book. The second, which is a digest of the main rules of statutory drafting as applied to India and is followed by some illustrative forms, is based on a memorandum of English statutory drafting drawn up by Sir C. Ilbert, K. C. S. I., Parliamentary Counsel to the Treasury and formerly Law Member of the Viceroy's Council.

NEW DELHI;
March 1950.

CONTENTS

	PAGE.
I —Table of cases cited	i—vi
II —The General Clauses Act, 1897	1—66
III —APPENDIX I —Note on the Indian Statute book	67—86
IV —APPENDIX II —Note on Statutory Drafting	87—115
V —INDEX	117—193

TABLE OF CASES CITED

Abdul Gafur v Queen Empress (1896) I L R 23 Cal 896	36
Abdulla t Mohan Gir (1859) I L R 11 All 490	11, 74
Abbot t Minister of Lands [1895] A C 425	45
Abhoy Churn Ghose t Attarmoni Dassee 13 C W N 931	18
Administrator General of Bengal v Prem Lal Mullick (1895) L R 22 I A 107	85, 97
Advocate General t Surnomoyee Dosssee 9 M I A 391	67, 70
Alter Kaufman t Government of Bombay (1894) I L R 18 Bom 636	53, 74
Amcer Khan in the matter of G Ben L R 459	70
Arayal Kuli Amina v Pelappakkara M S Nambudripad, I L R 31 Mad 292	44
Attorney General t De Keyser's Royal Hotel, [1920] A C 508	51
Attorney General v Lamplough (1878) 5 Ex D 214	33
Bah Sahu v King Emperor 3 Pat I J 433	63
Balkrishna t Bapu Yesaji (1895) I I R 19 Bom 204	44
Bank of England v Vaghano [1891] A C 107	95
Bank of Upper India v Administrator General of Bengal I L R 45 Cal 653	53
Bejoy Chandra Nag t Bunku Belari Mazumder, 13 O W N 451	22
Beer Chunder Manikya v Haj Coomay Nobodeep Chunder Deb Barmono (1853) I L R 9 Cal 535	21
Bessawar v Jasodra Lal (1913) I L R 40 Cal 701	44
Bell v Municipal Commissioners for the City of Madras I L R 25 Mad 457	77
Bennett t Brumfitt (1867) I R 3 C P 28	37
Beresford Hope t Lady Sanhurst (1869) 23 Q B D 79	50
Bhagchand t Secretary of State I L R 43 Bom 87 and 51 Bom 725 (P C)	5, 59
Bichitranund Je (1869) I I R 16 Cal 667	10
Blyth t Birmingham Water Works (1856), 11 Exch 731	19
Bridges t North London Railway (1874) L R 7 H L 213	16
Bugga t King Emperor I I R 1 Lah 326	53
Campbell t Strangeways (1877) L R 3 C P D 105	42
Chandi Pershad t Abdur Rahman I L R 25 Cal 131	53
Charlton t Lings (1868) L R 4 C P 374	70, 55
Collector of Tirana t Bhaskar Maladeo Sheth I L R 2 Bom 261	76, 87
Collector of Madhyam t Civaly Venkata Narasimaiah 8 M I A 590	51
Colonial Sugar Co t Irving [1905] A C 307	45
Curran t I I R 21 Bom 405	76
Dalla t Balgonia 5 Bom H C R (A C J) 37	53
Dinodhar Chodhan t Deoram Kanu (the Bhaunagar case) (1875) I R 3 I A 102 I I R 1 Bom 37 (P C)	10, 11, 74
Duffy Local Recruiter v Ahmed Ali (1877) I I R 25 Cal 331	46
Detre t Peck [1877] 4 A C 337	13

TABLE OF CASES CITED

<i>Abdul Gafur v Queen Empress</i> (1896) I L R 23 Cal 506	26
<i>Aidulla v Molan Gir</i> (1859) I L R 11 All 490	11, 71
<i>Abbot v Minister of Lands</i> [1890] A C 420	45
<i>Abl oy Churn Ghose v Attarnoni Dassee</i> 13 C W N 931	18
<i>Administrator-General of Bengal v Prem Lal Mullick</i> (1895) L R 22 I A 107	90, 97
<i>Advocate General v Surnomoyee Dassee</i> , 9 M I A 391	69, 70
<i>Alter Kaufman v Government of Bombay</i> (1894) I L R 18 Bom 636	53, 74
<i>Ameer Khan in the matter of</i> 6 Ben L R 459	70
<i>Arayil Kali Amma v Ielappakkara M S Namburipad</i> I I R 34 Mad 292	44
<i>Attorney General v De Keyser's Royal Hotel</i> , [1920] A C 508	51
<i>Attorney General v Iamplough</i> (1878) 5 Fr D 214	33
<i>Bali Sihu v King Emperor</i> 3 Pat I J 433	63
<i>Balkrishna v Bapu Yesaji</i> (1890) I I R 19 Bom 204	44
<i>Bank of England v Vagliaro</i> [1891] A C 107	95
<i>Barl of Upper India v Administrator General of Bengal</i> I L R 45 Cal 603	53
<i>Bejoy Chandra Nag v Bunku Balaraj Mazumder</i> , 13 O W N 451	22
<i>Beer Chunder Manikya v Raj Coomar Nobodeep Chunder Deb Barmono</i> (1893) I L R 9 Cal 535	21
<i>Bessaswar v Jasoda Lal</i> (1913) I L R 40 Cal 704	44
<i>Bell v Municipal Commissioners for the City of Madras</i> , I I R 25 Mad 457	77
<i>Bennett v Brumfitt</i> (1867) I R 3 O P 25	37
<i>Beresford Hojo v Lady Sanhurst</i> (1879) 23 Q B D 79	50
<i>Bhagchand v Secretary of State</i> I L R 48 Bom 87 and 51 Bom 25 (P C)	5, 59
<i>Bichitranund Jc</i> (1889) I I R 16 Cal 667	10
<i>Blyth v Birmingham Water Works</i> (1856) 11 Exch 261	19
<i>Bridges v North London Railway</i> (1874), L R 7 H L 213	15
<i>Bugla v King Emperor</i> I I R 1 Lah 220	53
<i>Campbell v Strangeways</i> (1877) L R 3 C P D 105	45
<i>Chanki Pershad v Alur Rahman</i> I I R 22 Cal 131	63
<i>Charlton v Ings</i> (1868) L R 4 C P 374	50, 55
<i>Collector of Thana v Bhaskar Maladeo Sheth</i> I L R 6 Bom 204	76, 87
<i>Collector of Malabar v Caraly Venkata Narayana</i> 17 S M I A 590	51
<i>Colonial Sugar Co v Irving</i> [1907] A C 599	45
<i>Curran v</i> , I I R 21 Bom 407	76
<i>Dal v Balgonla</i> 5 B 11 H C R (A C J) 37	25
<i>Damodar Choudhary v De ram Kanti</i> (the Bhaubagar case) (1875) I R 9 F A 102 I I R 1 Bom 377 (P C)	10, 11, 74
<i>Dputy Local Revenue Officer v Ahmad Ali</i> (1877) I L R 2 Cal 333	45
<i>Derre v Peck</i> [1877] 4 A C 37	13

Dinshaw Javery = Secretary of State for India, 21 Bom L R 210	50
Dominion of Canada & Province of Ontario, [1910] A C 637	51
Dunn v The Queen (1806), 1 Q B 116	50
Edwards & Ronald (1830), 1 Knapp P C 259	69
Emperor v Anandrao Phanse (1925) 27 Bom L R 1031	24
Emperor v Dhanu Amra (1914), 16 Bom L R 261	24
Emperor v Jaglerdeo Ram Sumar Tewari, 1 L R 49 Bom 801	53
Emperor v Punja Guni (1917) 1 L R 42 Bom 231	11
Empress v Burah (1878) L R 5 I A 178 1 L R 4 Cal 172 (P C)	74
Empress v Keshab Mahajan, (1892) 1 L R 8 Cal 985	10
Empress v Ramranyya (1878) 1 L R 2 Mad 5	24, 38
Empress v Ram Nares Singh (1912) 1 L R 34 All 118	11
Evans <i>In re</i> (1891) 1 Q B 143	0
Fztiekil & Co v Annada Charan Sen 1 L R 50 Cal 180	36
Jadu Jhala v Gour Mohun Jhala 1 L R 19 Cal 544	22
Feda Hossein <i>in re</i> the petition of, 1 L R 1 Cal 431	70
Forman <i>Ex parte</i> (1837), 18 Q B D 393	53
Irith v The Queen (1872), L R 7 Ex 365	54
Gangadharrao Venkatesh v Shidramappa Balappa Desai, 1 L R 18 Bom 536	36
Ganpat Pataya v Collector of Kanara (1875), 1 L R 1 Bom 7	72
Giris Chundra Basu v Apurba Krishna Dass 1 L R 21 Cal 910	24
Glaholm v Barker (1865), L R 1 Ch App 223	45, 46
Golam Mohauddin Hossein v Parbati, 1 L R 36 Cal 66	22
Goodman v Harvey (1836), 4 A & E 870	17
Gopaldas Ganpat Das v Tribhovan Jethiram, 22 Bom L R 1420	44
Go don v Cann (1879) L J H Q B D 434	40
Government of Bombay v Fausah Salebhai, 34 Bom 618	77
Gurea Biswas v Sreegopal Chowdhry (1867), 8 W R 395	36
Gur Sahai Bom v Sadik Muhammad 18 P R 506	34
Gwynne v Drewitt (1894) 2 Ch 616	43
Hajrat Akramnissa v Valulnissa (1894) 18 Bom 429	44
Hamilton Gell v White (1922) 2 K B 422	45
Hammermith etc Railway Co v Brand (1869), L R 4 H L 171	80
Hans Raj v Musummat Somni, 1 L R 41 All 665	18
Hari v Secretary of State 1 L R 27 Bom 421	82
Hari Mahadaji Savarkar v Balambhat Raghunath Khare (1894) 1 L R 2 Bom 273	46
Hazari Singh v Tirlani Singh 12 A L J 792, 23 I C 277	62
Hernandez Ramakrishna v Chellaram 13 I C 261	45
Horton and Idsworth Urban Council v Grant (1897), L R 2 Ch D 301	41 45
Huckle Narain v Alara Singl 1 L R 11 All 47	49
Hutchcock v War (1837) 6 A & E 943	41

Hopo Mills, Ltd v Vithaldas Pranjivandas, 11 Bom L R 730	45
Hurrosundari Dabi v Bhojohari Das Manji, 1 L R 13 Cal 86	46
Induraj Bhauraj Desai v Shruslal Nabhubhai 27 Bom L R 467	14
Institute of Patent Agents v Lockwood, [1891] A C 317	16, 32, 83 107
Jehangir M Cursetji v Secretary of State for India in Council 1 I R 27 Bom 187	56
Jenkins v Gursford (1863) 32 I J Pr 122	37
Jewa Nathoo in re 1 L R 44 Cal 459	40
Jogodanund v Amrita Lal, 1 L R 22 Cal 767	48
Jones v Gordon [1877] 2 A C 629	17
Julius v Bishop of Oxford [1880] 5 A C 214	32
Kali Nath Roy v King Emperor 1 L R 2 Yak 34	53
Kaylash v Banatan (1881) 1 L R 7 Cal 132	48
Kennaird v Cory and Son (1899) 2 Q B 578	99
Khanna Lal v Golind Krishna Narain 1 L R 33 All 750	44
Kochunni Dayal Nair, in re, 1 L R 45 Mad 14	53
Kotugiri Venkataran in re v Patibandu Narayana 21 I C 213	22
Krishna v Akilanda (1889) 1 L R 13 Mad 64	21
Krishnaji Ganesh v Secretary of State 21 Bom L R 376	11
Krishna Narain v Parash Singh (1878) 1 I R 2 All 1	11
Lake v Butler (1874) 5 I A B 92	50
Lalchand Ballis an v John L Kersten, 1 I R 15 Bom 338	42
Lambton and Hetton Collieries v Secretary Mines Department of the Board of Trade and Attorney General (1923) 1 Ch 586	46
Laurie v Renard (1897) 3 Ch 402	43
Limbayi Tulsaram, in re (1897) 1 I R 12 Bom 766	112
Mahamed Kasim Sahul v Panchayathi 1 I R 15 Mal 678	23
Malomei Malhi v Bakinaba 1 I R 37 Bom 791	44
Mahomed Saifol Ariffin v Yesh Oj Gork [1910] 2 A C 575	64
Malabaraj Jaswant Sangji v Dhu (1873) 1 L R 11 A 74	21
Makar Ali v Sarfudhin (1922) 1 L R 60 Cal 115	46
Manohar Lal v Sadaya Bhatt 3 I C 292	41
Marnis ex parte, [1902] A C 109	53
Mathura Das v Balu Lal (1878) 1 I R 1 All 63	6
Maung Aung Pu v Maung Si Maung 12 I C 809	17
Mayor of Lyons v East India Co (1836) 1 M J A 175	18
Metropolitan Railway v Jackson [1877] 3 A C 191	19
Mithensaw Rowthan v Ajasa Biri 1 L R 36 Mad 104	18
Moon v Durlen (1848) 2 Ex 22	41
Moxon v Faltigis (1770) 1 Cowp 161	53
Musai Kurmi v Sub Karan Kurmi 23 I C 230	71
Musgrove v Chun Teong Tay [1891] A C 272	53
Nair v St Andrews University [1909] A C 147	70
Nanak Rao v Melin Lal (1887) 1 I P 1 All 457	28

Nanjappa Gounden v Peruma Gounden, 1 L R 32 Mad 530	16
Narendra Nath Sarkar v Kamalbrinji Das (1895), L R 21 I A 12	95
Nicholls v Baker (1890) 41 Ch D 262	92
Nirmal Chandra Bandopadhyay v Sarat Mani Debba (1896) 1 L R 25 Cal 911	36
Nobin Chunder Dev v Secretary of State for India (1875), 1 L R 1 Cal 11	54, 78
Osborne v Millman 16 L J Q B	27
Padan Saha v Emperor, 5 C W N 659	61
Parvag Rai v Arju Mian, 1 L R 22 Cal 139	63
Perumal Goundan v Thirumalarayapuram J D S Nidhi 1 L R 41 Mad 624	28
Pharmaceutical Society v London Supply Association, (1890) 5 A C 857	28
Pichu Vadhuar v Secretary of State for India in Council 1 L R 40 Mad 767	52
P & O Co v Secretary of State for India, Bourke's Rep Pt VIII 167	78
Powell v Kempton Park Race Course Co (1897), 2 Q B C A 212	99
Prag Narain Baragya v Karachi Port Trust, 10 I C 972	29
Premshankar Raghunathi v Government of Bombay (1871) 8 Bom H C R (A C J) 195	81
Pryce v Monmouthshire Canal, etc, Co, [1879] 4 A C 216	50
Punardeo N Singh v Ram Sarup Roy (1899), 1 L R 25 Cal 258	90
Queen v Burah 1 L R 5 I A 178	76
Queen v Bura Hangeh and Book Singh, 3 Cal L R 197	74
Queen v Cowjer (1890) L R 21 Q B D 60	37
Queen v Local Government Board (1882) L R 10 Q B D 309	89
Queen v Ranichandrappe (1883) 1 L R 3 Mad 219	63
Queen Empress v Janki Prasad (1886) 1 L R 11 All 293	36
Queen Empress v Margal Teekchand, 1 L R 10 Bom 259	11
Queen Empress v Nagla 1 I R 22 Bom 235	24
Queen Empress v Narain (1887) 1 L R 9 All 240	22
Queen Empress v Pheroshah Hormusji (1890), 1 Bom L R 161	5
Queen Empress v Sunlar Singh (1890), 1 L R 12 All 95	24
Queen Empress v William Plummer (1897), 1 L R 22 Bom 841	112
R v Cassidy (1867), 4 Bom H C Rep C 17	98
R v Rahmat (1876), 1 L R 1 Bom 147	99
Ragho Prasad v Mewa Lal, 1 L R 34 All 223 (P C)	52
Rahmatulla v Emperor, 38 I C 433, 1 Pat L J, 373	63
Rampasati Chatterjee v Sachinandan Nandi, 55 I C 650	49
Rameshwar Singh v Secretary of State for India, 1 L R 79 Cal 1	78
Ram Gojal v Noor Mohamed (1882), 1 L R 20 Cal 446	21
Ram Krishna Ayyar v Sethal, 1 L R 48 Mad 620	46
Rash Behari Karuri v Narain Das Dorilal 27 C W N 231	6

Reg v Dedar Nushyo (1870), 14 W R Cr 81	38
Reg v Jlmstone (1870), 7 Bom Cr Ca 89	11
Reg v Hermann (1870), 4 Q B D 284	24
Reg v Jameson (1896), 65 L J M C 218	68
Reg v Kastya Rama (1871), 8 Bom Cr Ca. 63	11
Reg v McCann (1868), L R 3 Q B 141, 677	77
Reg v Riley (1896), 1 Q B 309	15
Republic of Costa Rica v Erlanger (1873), L R 3 Ch D 62	45
Rex v Chandra (1905) 2 K B 335	44
Rex v Earl of Crewe (1910), 2 K B 576	52
Reynolds v Attorney General for Nova Scotia (1890) A C 240	45
Ross v Secretary of State for India in Council, I L R 37 Mad 33, 39 Mad 781	78
Sambasiva Chari v Ramasami Reddi, I L R 22 Mad 179	40
Saroda Pershad v Pahali, I L B 10 Cal 313	26
Secretary of State v Bhaskar, 27 Bom L R 973	32
Secretary of State v Bombay Landing Co (1869), 8 Bom H C B (O C J) 23	52, 77
Secretary of State for India v Hari Bhanji (1882), I L R 5 Mad 273	78
Secretary of State for India v Mathurabha, I L R 14 Bom 213	77
Secretary of State for India in Council v Cockcroft, I L R 39 Mad 351	51
Secretary of State in Council of India v Kamachi Boro Sahai 13 Moore P C 22	52
Segu Bahiah v N Ramasamah 12 I C 603	63
Shenton v Smith [1895] A C 229	56
Shionandan Prasad Singh v King Emperor, 3 Pat I J 581	76
Sheo Singh v Raghubans Kunwar, I L R 27 All 634	53
Shoydis Daulatram Marwadi v Narain Valad Asaji, I L B 36 Bom 263	49
Shuba Halder v Gupi Sundari Dasva I L R 24 Cal 449	55
Sirdar Bhagwan Singh v Secretary of State for India in Council, I L R 21 A 39	52
Sital Chandra Chowdhury v Mrs A J Delannev, 20 C W N 1153	22
Sitaram v Peter, 43 I C 962	52
Slesper Suppl Co, re (1885), L R 20 Ch D 201	42, 48
Smithies v National Association of Operative Planters (1909) 1 K B 910	44
Sobhuza v Miller, [1920] A C 518	57
Soni Ram v Kanhaivalal, I L B 35 All 227 (P C)	45
South British Fire and Marine Insurance Co v Brojo Nath Shaha, I J B 30 Cal 516	35
South Staffordshire Tramways Co v Sickness and Accident Assurance Association (1891) 1 Q B 492	43
Spooner v Juddow, 4 M I A 351	56
Stanton re (1887) 19 Q B D 162	52
Stockport Ragged Industrial and Reformatory Schools, in re (1899) L J 6 Ch D Part I, p 41	91
Sulmanra v The Queen (1883) I L R 6 Mad 396	36
Sukhnandan v Manakchand 10 I C 473	22

Surendra Narain Singh v Bhai Lal Thakur (1890)	
I L R 22 Cal 752	21
Swinton v Bailey [1878] 4 A C 70	35
Thurlow v (1895) 1 Q B 724	92
	(footnote)
Thumalaisami Naidu v Subramaniam Chettiar I L R	
40 Mad 1009	45
Tomlinson v Bullock (1879) 4 Q B D 230	42
Toronto Corporation v C P R [1908] A C 54	58
Union Steam Ship Company of New Zealand v Mel	
bourne Harbour Trust Commissioners [1884] 9 A C	
365	93
U Tiet v Tola Ram 43 I C 695	22
Van v Daya Desikar v Murugesu Mudali I L R 29	
Mad 76	25
Vannan Nanardan Joshi v Collector of Thana and the	
Conservator of Forests 6 Bom H C R (A C J) 191	53
Voss v Secretary of State for India I L R 33 Cal	
869	56
Wana Ward Raoji v Natu Walad Murpha I L R	
25 Bom 35	41
Williams v Howarth [1905] A C 551	51
Woomes v Olandra Bose v Soorjee Kanto Roy (1880)	
I L R = Cal 713	5
Young v Adam [1898] L R A C 469	45

CONTENTS

Preliminary

SECTIONS

- 1 Short title
- 2 *Repeal* Repealed

General Definitions.

- 3 Definitions
- 4 Application of foregoing definitions to previous enactments

General Rules of Construction

- 5 Coming into operation of enactments
- 6 Effect of repeal
- 7 Revival of repealed enactments
- 8 Construction of references to repealed enactments
- 9 Commencement and termination of time
- 10 Computation of time
- 11 Measurement of distances
- 12 Duty to be taken *pro rata* in enactments
- 13 Gender and number
- 13A References to the Sovereign.

Powers and Functionaries

- 14 Powers conferred on the Government to be exercisable from time to time
- 15 Power to appoint to include power to appoint *ex officio*
- 16 Power to appoint to include power to suspend or dismiss
- 17 Substitution of functionaries
- 18 Successors
- 19 Official chiefs and subordinates

Provisions as to Orders, Rules, etc., made under enactments

- 20 Construction of orders, etc., issued under enactments
- 21 Power to make, to include power to add to, amend, vary or rescind, orders, rules or bye-laws
- 22 Making of rules or bye-laws and issuing of orders between passing and commencement of enactment

SECTIONS

- 23 Provisions applicable to making of rules or bye-laws, after previous publication.
- 24 Continuation of orders etc , issued under enactments repealed and re-enacted

Miscellaneous

- 25 Recovery of fines
- 26 Provision as to offences punishable under two or more enactments
- 27 Meaning of service by post
- 28 Citation of enactments
- 29 Saving for previous enactments, rules and bye-laws
- 30 Application of Act to Ordinances
- 30A Application of Act to Acts made by the Governor General
- 31 Construction of references to Local Government of a Province

THE SCHEDULE —*Enactments repealed* —Repealed

THE GENERAL CLAUSES ACT, 1897.

(X OF 1897.)

[11th March, 1897]

An Act to consolidate and extend the
General Clauses Acts, 1868 and 1887

1868
1887
WHEREAS it is expedient to consolidate and
extend the General Clauses Acts, 1868
and 1887, It is hereby enacted as follows —

Preliminary

1. (1) This Act may be called the General Short title
Clauses Act 1897

* * * *

This Act does not effect any change in the existing Objects of
law. Its object, like that of the Acts it repeals and Act
consolidates, is to shorten the language of statutory
enactments and to provide for uniformity of expression
where there is identity of subject matter.

2. The first enactment of the kind in England was History of
Lord Brougham's Act (13 & 14 Vict. c. 21) which was legislation
passed in 1850. The provisions of that statute were
adapted to India, and somewhat amplified by the General
Clauses Act, 1868 (I of 1868), and the General
Clauses Act, 1887 (I of 1887) was a further extension
of the same principle. In so far as those Acts contained
statutory definitions it was obviously expedient that
the legislative dictionary, as it may be called, should
be contained in a single enactment, and similar considera-
tions applied, though less strongly, to rules of construc-
tion. It also seemed desirable to take the opportunity
of making some additions suggested by later experience
and in particular to incorporate such provisions of the
Interpretation Act, 1889 (52 & 53 Vict. c. 67) as might
be applicable to India. That statute, like the Indian
Act of 1887, was drafted by Sir C. Illert, and is in effect
a careful

¹ The words "and" and sub-section (2) were repealed by Sch
II of the Repealing and Amending Act 1914 (X of 1914)

(Preliminary.—Section 1.)

a careful revision and extension of the latter. For example, the definition of "British India" in the English Act of 1889 is merely an expansion of the definition given by the Indian Act of 1868. Its legal effect is the same, but it is more intelligible and it avoids a reference to another enactment. The present Act has this further advantage, that it will tend to secure uniformity of language and construction in Indian and English legislation in so far as both deal with the same subject-matter. As India is subject to English legislation, and as its legislative powers are derived from the English Parliament, the advantages of formal uniformity are obvious (See Statement of Objects and Reasons, *Gazette of India*, 1897, Pt. V, p. 33)

3 Each of the local legislatures has passed an Act similar to this

- (a) The Madras General Clauses Act, 1891 (Madras Act I of 1891 as amended by Madras Acts II of 1896 and XI of 1920).
- (b) The Punjab General Clauses Act, 1898 (Punjab Act I of 1898 as amended by Punjab Act VI of 1918)
- (c) The Burma General Clauses Act, 1898 (Burma Act I of 1898 as amended by Act I of 1903 and Burma Act I of 1919).
- (d) The Bengal General Clauses Act, 1899 (Bengal Act I of 1899 as amended by Bengal Acts I of 1903 and I of 1914)
- (e) The Bombay General Clauses Act, 1904 (Bombay Act I of 1904 as amended by Bombay Act IV of 1905)
- (f) The United Provinces General Clauses Act, 1904 (United Provinces Act I of 1904).
- (g) The Eastern Bengal and Assam General Clauses Act, 1909 (Eastern Bengal and Assam Act I of 1909)
- (h) The Central Provinces General Clauses Act, 1914 (Central Provinces Act I of 1914)
- (i) The Bihar and Orissa General Clauses Act, 1917 (Bihar and Orissa Act I of 1917).
- (j) The Assam General Clauses Act, 1915 (Assam Act II of 1915 as amended by Assam Act I of 1922)

4. The

(Preliminary—Section 1)

4 The present Act is a consolidating as well as an extending measure. For the construction of a consolidating Act, see *Craies on Statute Law*, pp 125 127 and 301 304, 3rd Edition. As a consolidating measure it does not purport to effect any change in the provisions: it purports to repeal.

5 The present Act can be used for construing the Acts of the central legislature only. It cannot except where any specific provision (e.g., sections 12, 26 and 31) is clearly of universal application, be used to interpret the Acts of provincial legislatures. [See *Hoomesh Chandra Bose v Soorjee Kanto Roy* (1890) 1 L. R. 5 Cal 713 *Queen Empress vs Pherozshah Hormusjee* (1899) 1 Bom L. R. 164.] Its provisions apply expressly to Acts but section 20 provides that expressions used in rules etc. made under Acts shall have the same meaning as in the Act which confers the power to make the rules. Words therefore used in statutory rules and defined in the General Clauses Act will have the meaning assigned to them therein if they are used in the Act under which the rules are made and all the provisions of the General Clauses Act will be applicable for the construction of rules which by the Act under which they are made are to have effect as if enacted therein. The rules of interpretation laid down in the General Clauses Act do not apply strictly applied for the construction of statutory rules. In some rules e.g. in the Indian Arms Rules 1920 made under section 17 of the Indian Arms Act 1878 there is a specific provision to the effect that the General Clauses Act shall apply for the purpose of interpreting the rule.

6 Some of the provisions of the Act apply to Acts passed before it came into force while others do not. In this it differs from the Act of 1887 which applied only to Acts made after it was passed and follows the Interpretation Act (52 & 53 Vict. c. 63).

Sections 5 (3) 15 16 20 21 (2) and 26 apply to any Act. See *Blay and v Secretary of State* (1924) 1 L. R. 48 Bom 87 affirmed by the P. C. (1927) 1 L. R. 11 Bom 72 where section 21 of the Bombay General Clauses Act which is similar in terms to section 21 of this Act was held to have retrospective effect. Section 12 applies to any enactment now in force or hereafter to be in force. Section 13 applies to all Acts. Sections 7, 8, 9 (1) 10 (1) 11 14 (1) 17 (1) 18 (1) 19 (1), 24 27 and 28 (2) apply only to subsequent enactments.

7 Thus

Preliminary — (Sections 1-2) General Definitions — Section 3)

7 Thus definitions in section 3 are held not to apply to Acts passed before this Act came into force or the Act of 1868 was passed—*Rash Behari vs Narain Das* (1922), 27 C W N 231 Sections 4, 7 (2), 9 (2), 10 (2), 14 (2), 17 (2), 18 (2) and 19 (2) apply to certain specified previous enactments Sections 5 (1) & (2), 22, 23, 24, 28 (1) apply to future Acts only

2. [Repeal] *Rep by the Repealing and Amending Act, 1903 (1 of 1903)*

General Definitions

definitions.

3. In this Act, and in all Acts of the Governor General in Council and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,—

For the application of the definitions mentioned in this section to the Acts of provincial legislatures and for the retrospective operation of the section see paras 5 and 7 of notes to section 1

2 As the definitions are numerous they have been arranged in alphabetical order All of them are governed by the introductory words "unless there is anything repugnant in the subject or context" and must be read subject to this qualification which limits the general application of the definitions For the scope of these and similar words, see *Crates on Statute Law*, 3rd Ed, pp 89 to 101 103 to 105 *Bonnerjee on Interpretation of Statutes*, Lecture XI p 190, *In re Frans* (1891) 1 Q B 143

3 The expression "Act of the Governor General in Council" is not defined but by sections 30 and 30A of this (the General Clauses) Act it includes an Ordinance made under section 72 of the Government of India Act and an Act made by certification under section 67B of that Act The expression must be read as including an Act of the Indian legislature as constituted under the Government of India Act, cf the last paragraph of s 130 of that Act

bet."

(1) "Abet", with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code

(General Definitions — Section 3)

This definition reproduces the definition given by s 3 (1) of the General Clauses Act 1887. It incorporates by reference ss 107 to 117 of the Indian Penal Code.

- (2) 'act' used with reference to an 'Act' offence or a civil wrong, shall include a series of acts and words which refer to acts done extend also to illegal omissions

This definition is founded on ss 32 and 33 of the Indian Penal Code but covers civil wrongs as well as crimes as similar considerations apply to both.

2 Its operation may be illustrated from the Indian Penal Code. By s 299, 'whoever causes death by doing an act with the intention of causing death * * * commits the offence of culpable homicide.' Now if 'A intentionally causes / s death partly by illegally omitting to give / food and partly by beating Z A has committed murder. (See s 36 *ibid*, illustration.) The "act" by which A causes / s death consists really of a series of acts i.e. the blows given in beating him plus a series of illegal omissions i.e. wrongfully neglecting or refusing to supply him with food at proper times.

- 2) "affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing

This definition is taken from s 2 (17) of the General Clauses Act 1887. Compare the definitions of "oath" and "swear" which are given later on in their alphabetical order.

2 The definition is required because primarily and etymologically "affidavit" signifies a written statement verified by oath. The word itself is a low Latin word which may be translated—"he has stated on faith or oath." Like many old English law terms the term "affidavit" derives its name from the material word used in the document itself.

3 As to affidavits in civil proceedings, see the Code of Civil Procedure (V of 1908) Order XIX. For criminal proceedings see the Code of Criminal Procedure 1898 (V of 1898) s 539.

[(3a) "Assam

(General Definitions—Section 3)

"Assam Act"

¹[(3a) "Assam Act" shall mean an Act made by the Chief Commissioner of Assam in Council under the Indian Councils Acts, 1861 to 1909] ²[or the Government of India Act, 1915] ³[or by the local legislature or the Governor of Assam under the Government of India Act]

24 & 25 Vict
c 67, 9 Edw
7 c 4, 5 &
6 Geo 5, c
61

"Barrister"

(4) "barrister" shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland

This definition reproduces the definition given by s 2 (14) of the General Clauses Act, 1868. It appears to have been taken from s 19 of the Indian High Courts Act, 1861 (24 & 25 Vict, c 104). See now s 101 (3) of the Government of India Act

"Bengal Act"

¹[(5) "Bengal Act" shall mean, in the case of Acts passed prior to the 1st April, 1912, an Act made by the Lieutenant Governor of Bengal in Council under the Indian Councils Act, 1861 or the Indian Councils Acts 1861 and 1892, or the Indian Councils Acts, 1861 to 1909, and in the case of Acts passed after that date, an Act made by the Governor of the Presidency of Fort William in Bengal in Council under the Indian Councils Acts, 1861 to 1909] ²[or the Government of India Act, 1915] ³[or by the local legislature or the Governor of the presidency of Bengal under the Government of India Act]

24 & 25 Vict
c 67, 55 and
50 Vict
14, 9 Edw
7 c 4

5 & 6, Geo 5,
c 61

Without

¹ This clause was inserted by Sch I of the Repealing and Amending Act 1914 (X of 1914)

² and Sch I of the Repealing Act 1917)

³ and Sch I of the Repealing Act 1923)

Sch I of the Repealing and Amending Act 1917)

⁴ These words were added by s 11 and Sch I of the Repealing and Amending Act 1923 (XIII of 1923)

(General Definitions—Section 3)

Without this definition, the term "Bengal Act" might mean either an Act passed by the Bengal Council or an Act passed by the central legislature but applicable only to Bengal. It thus avoids a tedious periphrasis *Cf* definitions Nos (6), (30) and (35), *post*. Bengal is now a Governor's province

2 Since the passing of this Act, Legislative Councils have been constituted for the Punjab, United Provinces, Bihar and Orissa, the Central Provinces, Burma, Assam, and Coorg

- 1[(5a) "Bihar and Orissa Act" shall mean ^{"Bihar and Orissa Act"} an Act made by the Lieutenant-Governor of Bihar and Orissa in Council under the Indian Councils Acts, 1861 to 1909] ²[or the Government of India Act, 1915] ³[or by the local legislature or the Governor of Bihar and Orissa under the Government of India Act]

- (6) "Bombay Act" shall mean an Act made ^{"Bombay Act"} by the Governor of Bombay in Council under '[the Indian Councils Act, 1861, or] the Indian Councils Acts, 1861 and 1892, ²[or the Indian Councils Acts, 1861 to 1909] ³[or the Government of India Act, 1915] ⁴[or by the local legislature or the Governor of the presidency of Bombay under the Government of India Act:]

See note to No (5)

- (7) "British India" shall mean all territories and places within Her Majesty's ^{"British India"} dominions which are for the time being governed by Her Majesty through the Governor

¹ This clause was inserted by Sch 1 of the Repealing and Amending Act 1914 (X of 1914)

² These words were added by s 2 and Sch 1 of the Repealing and Amending Act, 1917 (XXIV of 1917)

³ These words were added by s 2 and Sch 1 of the Repealing and Amending Act 1924 (XVIII of 1924)

⁴ These words were inserted by the Amending Act 1904 (I of 1904)

⁵ These words were inserted by Sch 1 of the Repealing and Amending Act, 1914 (X of 1914)

2
c 67.

7, c 4
6 Geo 5,
1

& 25 Vict
67, 65 &
Vict., c

17 7, c 4
& 6 Geo 5,
6

(General Definitions—Section 3)

Governor General of India or through any Governor or other officer subordinate to the Governor General of India

This definition is taken from s 18 (4) of the Interpretation Act, 1889 (52 & 53 Vict, c 63) See Ilbert's *Government of India*, 3rd Ed, pp 267-273

2 By s 2 (8) of the General Clauses Act, 1868, as originally passed, "British India" was defined to mean "the territories for the time being vested in Her Majesty by the Statute 21 & 22 Vict, c 106 (*An Act for the better government of India*), other than the Settlement of Prince of Wales' Island Singapore and Malacca" The last twelve words, were repealed by the Repealing and Amending Act, 1891 (XII of 1891) The new definition is merely an expansion of the old definition Its legal effect is the same, but it is more intelligible and it avoids a reference to another statute Moreover, as India is ultimately governed by English statutes, it seems right that the definition of "British India" should be the same for both English and Indian Acts

3 For the definition of 'India' see No (27), post, p 22, and note that Aden is included in British India (paragraph 6 below) The limits of British India are not always defined by metes and bounds, and the division of sovereignty between the British Government and Indian States sometimes gives rise to difficulty, see for instance, a discussion of the status of the Tributary Mahals of Orissa in *Empress v Keshub Mohajan* (1882), I L R 8 Cal 98, and *Re Bichitranund* (1889), I L R 16 Cal 667 It is now settled that the Mahals are not included in British India, see Act XI of 1893 The words "for the time being" are important, for, in the absence of express words extending the application of an enactment to future territory, an enactment applies only to territory covered by the description contained in the enactment at the time when it became law A regards newly acquired particular territory proclamation, (5) orders in Statute Law, Maine's Minutes, No 81 at p 190

4 As a general rule British territory can be ceded only by legislation—*Damodhar Gordhan v Deorani Kanji*, known as *The Bhaunagar Case* (1875) L R 3 I A 102 and I L R 1 Bom 367, and the Bhaunagar Act (XX of 1876) But, for the purpose of rectifying boundaries,

(General Definitions—Section 3)

boundaries British territory can, perhaps be ceded to an Indian State under the suzerainty of the Queen without legislation—*Lachmi Narain v Partab Singh* (1878), I L R 2 All 1, at p 32 See also *Krishnaji Ganesh v the Secretary of State* (1918), 21 Bom L R 376 in which it was held that the East India Company had power to cede any territory to an Indian Chief, and the cases of the cession of territory to the Maharaja of Benares *Empress v Ram Naresh Singh* (1912), I L R 34 All 118 See also Field's Law of Evidence, 7th Ed, p 374, *Abdulla v Mohan Gir* (1889) 11 All 490, and Ilbert's *Government of India* 3rd Ed pp 35 36 171 and 234 It should, however, be noted that the exercise of jurisdiction over any territory does not *ipso facto* amount to the exercise of suzerainty nor does it make the territory a part of British India The cession of territory is always a question of fact—*Damodar Gordhan v Deoram Kanji* (1876) I L R 1 Bom 367 P C Aden and Perim are parts of British India *Queen Empress vs Mangal Teelchand* (1886) I L R 10 Bom 258

5 The expression British India as above defined, includes the land down to low watermark and would ordinarily include the territorial waters of British India though not of course the high seas beyond—*Reg v Elmstone* (1870) 7 Bom C1 C2 at p 109 According to the Bombay High Court held in 1871 that the provisions of the Indian Penal Code applied to offences committed within a marine league of the shore of British India—*Reg v Kistner* (1871) 5 Bom C1 C2 (1871) But the Territorial Waters Jurisdiction Act 1878 (41 & 42 Vict c 73) which applies to the whole of His Majesty's dominions has been framed without reference to the power of the Indian legislature and it seems now that if the offender is not a British subject he must be punished in accordance with English law and not Indian law and the Court by which he is to be tried must be determined by the various and perplexing British and Indian enactments which confer Admiralty jurisdiction Where an offence was committed by a subject of an Indian State on a ship belonging to that State on the high seas beyond territorial limit, it was held that a British Indian Court had no jurisdiction *Emperor v Punja Gani* (1917) I L R 42 Bom 234 For fiscal and protective purposes the Indian legislature has made laws for Indian waters—see e.g. Transport of Salt Act 1879 (XVI of 1879) and the Obstructions in Fairways Act 1881 (XVI of 1881)

6 By section 2 of the Aden Laws Regulation 1891 (Aden (II of 1891)) it is enacted that "In this Regulation and

(General Definitions—Section 3)

in all enactments and rules heretofore or hereafter passed and made by the Governor General in Council or the Governor of Bombay in Council, the word 'Aden' shall, unless there is something repugnant in the subject or context, or the word is used with reference to Her Majesty's Vice-Admiralty Court at Aden, be construed to mean the settlement of Aden and such of its dependencies for the time being, inclusive of the villages of Shaikh Othman, Imad and Hiswa, the Island of Perim and Little Aden, as are administered by the Governor of Bombay in Council."

Straits Settlements

7 The Settlement of Prince of Wales' Island, Singapore and Malacca were, in pursuance of the Straits Settlements Act, 1866 (29 & 30 Vict., s. 115), s. 1, removed from British India and placed under the Colonial Office

"British possession."

(8) "British possession" shall mean any part of Her Majesty's dominions, exclusive of the United Kingdom, and, where parts of those dominions are under both a central and a local legislature, all parts under the central legislature shall for the purposes of this definition be deemed to be one British possession

This definition is taken from s. 18 (2) of the Interpretation Act, 1889 (52 & 53 Vict., c. 63). British India is a British possession and not a colony, New Zealand is both a British possession and a colony—see definition of "Colony" No. (11), *post*, p. 13

"Burma Act."

'[(8a) "Burma Act" shall mean an Act made by the Lieutenant Governor of Burma in Council under the Indian Councils Acts, 1861 and 1892² [or the Indian Councils Acts, 1861—1909]³ [or the Government of India Act, 1915]⁴ [or by the local legislature or the Governor of Burma under the Government of India Act]

² 24 & 25 Vict.
c. 67, 53 &
50 Vict. c. 14,
9 Edw. 7, c.
4, 5 & 6
Geo. 5, c. III

[(8b) "Central

¹ This clause was inserted by the Amending Act, 1903 (I of 1903)

² These words were inserted by s. 1 of the Repealing and Amending Act 1914 (X of 1914)

³ These words were inserted by s. 2 and Sch. I of the Repealing and Amending Act 1917 (XXV of 1917)

⁴ These words were added by s. 2 and Sch. I of the Repealing and Amending Act, 1923 (XXIII of 1923)

(General Definitions—Section 3)

- ¹[(8b) "Central Provinces Act" shall mean an Act made by the Chief Commissioner of the Central Provinces in Council under the Indian Councils Acts, 1861 to 1909] ²[or the Government of India Act, 1915] ³[or by the local legislature or the Governor of the Central Provinces under the Government of India Act]

"Central Provinces Act".

- (9) "Chapter" shall mean a Chapter of the "Chapter." Act or Regulation in which the word occurs

This definition reproduces the definition given by s 3 (2) of the General Clauses Act 1897. It is supplemented by the definitions of "Part," "schedule," "section" and "sub-section" *post* Nos (38), (48), (50) and (51)

- (10) "Collector" shall mean, in a Presidency town, the Collector of Calcutta, Madras or Bombay, as the case may be, and elsewhere the chief officer in charge of the revenue-administration of a district

"Collector"

Compare Bombay Act I of 1904, s 3 (11) and United Provinces Act I of 1904, s 4 (9) (local General Clauses Acts). In non-regulation provinces Collectors are known as Deputy Commissioners

- (11) "Colony" shall mean any part of Her Majesty's dominions exclusive of the British Islands and of British India, and, where parts of those dominions are under both a central and a local legislature all parts under the central legislature shall for the purposes of this definition be deemed to be one colony

"Colony"

This definition is taken from s 18 (3) of the Interpretation Act 1889 (2 & 3 Vict c 63) Statutes passed

¹ This clause was inserted by s 2 of the Second Repealing and Amending Act 1914 (XXII of 1914)

² These words were added by s 2 and Sch I of the Repealing and Amending Act 1917 (XXV of 1917)

³ These words were added by s 2 and Sch I of the Repealing and Amending Act 1928 (XVIII of 1928)

(General Definitions—Section 3)

ed in England do not *ipso facto* apply to colonies. See *Craies on Statute Law*, 3rd Ed., p. 40.

2 The English Act defines the expression "British Islands" to mean the United Kingdom, the Channel Islands and the Isle of Man. It was unnecessary to reproduce this definition for Indian purposes. The definition must now be read with s. 3 of the Irish Free State (Consequential Adaptation of Enactments) Order, 1923.

3 The expression "colony" is a geographical and not a political term, and does not imply any form, still less any special form, of government, nor is it precisely co-extensive with the functions of the Colonial Secretary. For the status of Cyprus and other territories, see Halsbury's *Laws of England* Vol. X, p. 836, p. 503.

"Commencement."

(12) "commencement," used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force.

This definition reproduces the definition given by s. 3 (4) of the General Clauses Act, 1887. Cf. s. 36 (1) of the Interpretation Act 1889 (52 & 53 Vict., p. 63).

2 For rules determining when any given Act is to come into force or operation, see s. 5, *post*, p. 41.

"Commissioner."

(13) "Commissioner" shall mean the chief officer in charge of the revenue administration of a division.

Compare the United Provinces General Clauses Act, 1904 (United Provinces Act I of 1904), section 2 (11).

"Consular officer."

(14) "consular officer" shall include consul-general, consul, vice consul, consular agent, pro consul and any person for the time being authorized to perform the duties of consul-general, consul, vice consul or consular agent.

This definition is taken from s. 3 of the Consular Salaries and Fees Act 1891 (54 & 55 Vict., p. 26).

2 For the status of consular officers and consular courts in Eastern States see Hall's *Foreign Jurisdiction of the Crown*.

"District Judge."

(15) "District Judge" shall mean the Judge of a principal Civil Court of

(General Definitions—Section 3)

jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction

This definition reproduces the definition given by s 2 (12) of the General Clauses Act 1868. Most of the Acts in which the expression occurs have now however, separate definitions of it.

2. For the definition of "High Court," see No (2f) *post*, p 20

(16) "document" shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, which is intended to be used, or which may be used, for the purpose of recording that matter Document

This definition is taken from s 3 of the Indian Evidence Act 1872 (I of 1872). The word "written" was added in Select Committee to incorporate the definition of 'writing'—see No (58, *post* p 39. The definition corresponds with that given by s 29 of the Indian Penal Code except that the words "for the purpose of recording that matter" have been substituted for the words "as evidence of that matter."

2. The Indian Evidence Act gives the following illustrations—"A writing is a document. Words printed, lithographed or photographed are documents. A map or plan is a document. An inscription on a metal plate or stone is a document. A caricature is a document. The Indian Penal Code gives also this further illustration—"A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement as explained by mercantile usage is that the bill is to be paid to the holder. The endorsement is a document and must be construed in the same manner as if the words pay to the holder or words to that effect had been written over the signature."

3. As to documents as evidence in legal proceedings see Field's *Law of Evidence*. For a discussion of the term "forged instrument" see *Pej v. Pej*, 1881 1 Q. B. 39 where a forged telegram was held to be a forged instrument under the Forgery Act 1861 24 & 25 Vict. c. 98) see also Stroud's *Judicial Dictionary*, s 1 "Document."

(General Definitions —Section 3)

ed in England do not *ipso facto* apply to colonies See *Craies on Statute Law*, 3rd Ed., p. 403

2 The English Act defines the expression "British Islands" to mean the United Kingdom, the Channel Islands and the Isle of Man. It was unnecessary to reproduce this definition for Indian purposes. The definition must now be read with s. 3 of the Irish Free State (Consequential Adaptation of Enactments) Order, 1923.

3 The expression "colony" is a geographical and not a political term, and does not imply any form, still less any special form, of government, nor is it precisely co-extensive with the functions of the Colonial Secretary. For the status of Cyprus and other territories see Halsbury's *Laws of England* Vol. X, s. 856, p. 503.

"Commencement."

(12) "commencement," used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force.

This definition reproduces the definition given by s. 3 (4) of the General Clauses Act, 1887. Cf. s. 36 (1) of the Interpretation Act, 1889 (52 & 53 Vict., c. 63).

2 For rules determining when any given Act is to come into force or operation, see s. 5, *post*, p. 41.

"Commissioner."

(13) "Commissioner" shall mean the chief officer in charge of the revenue administration of a division.

Compare the United Provinces General Clauses Act, 1904 (United Provinces Act I of 1904), section 2 (11).

"Consular officer."

(14) "consular officer" shall include consul-general, consul, vice consul, consular agent, pro consul and any person for the time being authorized to perform the duties of consul-general, consul, vice consul or consular agent.

This definition is taken from s. 3 of the Consular Salaries and Fees Act, 1891 (54 & 55 Vict., n. 36).

2 For the status of consular officers and consular courts in Eastern States see Hall's *Foreign Jurisdiction of the Crown*.

"District Judge."

(15) "District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction.

(General Definitions—Section 3)

This definition reproduces the definition given by s 3 (c) of the General Clauses Act, 1887 For the definition of "year," see No (59) *post*, p 39

2 Compare the definition of "financial year" given by s 22 of the Interpretation Act, 1889 (52 & 53 Vict, c 63) For this purpose English and Indian dates correspond

(20) a thing shall be deemed to be done in ^{Good} "good faith" where it is in fact done ^{faith} honestly, whether it is done negligently or not

This definition coincides with the definitions given by s 90 of the Bills of Exchange Act 1882 (45 & 46 Vict c 61), and s 62 of the Sale of Goods Act 1893 (56 & 57 Vict c 71)

2 The definition departs from the standard laid down by the Indian Penal Code and the Indian Limitation Act By s 52 of that Code (and similarly by s 2 (7) of the Indian Limitation Act 1908) nothing is said to be done or believed in good faith which is done or believed without due care or attention In other words for the purposes of the Code a thing which is done negligently is not deemed to be done in good faith It would be inconvenient to apply this artificial standard to cases outside the Code There are many instances in which a man is properly held negligent by this standard, but then it is better to provide expressly that he shall be liable unless he has acted "in good faith and without negligence" or "in good faith and with due care and attention" In ordinary language good faith is opposed to bad faith and not to negligence English law has long recognized this, for, as Lord Denman said in 1836 *gr & negligence may be evidence of mala fides* but is not the same thing We have shaken off the last remnant of the contrary doctrine—*Goodman v Harrey* (1836) 4 A & E at p 87 *cf Jones v Gordon* [1877] 1 R 2 A C 629 The definition of good faith was the subject of discussion in the Legislative Council—see *Gazette of India* 1897 Pt VI pp 56 to 60 and 76 to 79 The definition of good faith given in this Act does not apply expressly to the term as used in the Contract Act The definition in civil law is that a thing is deemed to be done in good faith which is done without due care and caution *i.e.* due care and caution expected of a man of ordinary prudence—*Maung Lunj Pu v Maung Se Maung* (1911) 12 I C 800

(General Definitions—Section 3)

For the scope and meaning of the term as defined in this Act, see cases under ss 41 and 51 of the Transfer of Property Act where the term has been used *Morthensa Roithan v Apsa Bai*, (1911) I L R 36 Mad 194 *Hans Raj v Somni* (1922) I L R 44 All 665, *Nanjappa Gounden v Peruma Gounden*, (1909) I L R 32 Mad 530 *Abloy Churn Glose v Attarmoni Dassee*, (1908) 13 C W N 931

Fraud

3 The English Courts have always refrained from giving a definition of fraud but the criteria of a fraudulent representation are thus summed up by Lord Halsell in *Derry v Peck* 1889 I R 14 A C 337 at p 374 (an action for damages) — "Fraud is proved when it is shown that a false representation has been made (1) knowingly or (2) without a belief in its truth, or (3) recklessly, careless whether it be true or false. Although I have treated the second and third as distinct cases I think the third is but one instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states. To prevent a false statement being fraudulent there must, I think be an honest belief in its truth. And this probably covers the whole ground for one who knowingly alleges that which is false has obviously no such honest belief. For the purposes of contract see the definition of fraud given by s 17 of the Indian Contract Act 1872 (IX of 1872)

Negligence

4 For legal purposes, "negligence" may probably be defined as the breach by one person of a legal duty to use due care proximately causing damage to another person

Sir F Pollock has pointed out that negligence exactly corresponds with *culpa* in Roman law while *dolus* corresponds with intentional wrong doing—*Law of Torts*, 12th Ed p 16. The duty to use care may arise from contract or may be imposed by law independently of contract the general rule being that every one is bound to exercise due care towards his neighbours in his acts and conduct or rather that if he falls short of this he does so at his own peril. If there be no legal duty to use care the law can take no cognizance of negligence, however mischievous may be its results

For the theory and history of negligence in English and American law, see *Holmes on the Common Law*, Chap III

The civil effects of negligence are two fold —(1) The party injured has a substantive cause of action but the defendant may set up the defence that the plaintiff has

(General Definitions—Section 3)

been guilty of contributory negligence, (2) a party who complains that another person has committed a negligent breach of duty or contract may, in certain cases, be estopped by his own negligence—see *Smith's Leading Cases*, 12th Ed, pp 317, 321

The following citations illustrate the above definition —“Negligence in law is a breach of duty unintentional, and proximately producing injury to another possessing equal rights”—*Smith's Law of Negligence* p 1 “Negligence is the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs,

“The definition is that negligence consists in doing some act which a person of ordinary care and skill would not do under the circumstances”—*Bridges v North London Railway* (1874) L R 7 H L at p 213 Speaking of actionable negligence Lord Cairns says “It must be if I might invent an expression founded upon a phrase in the civil law, *incuria dans locum injuria*.”—*Metropolitan Railway v Jackson* [1877], L R 1 A C at p 194 See also Austin's *Jurisprudence*, 4th Ed, p 425 and Innes' *Law of Torts*, pp 25 27

(21) “Government” or “the Government” “Government” shall include the Local Government as well as the Government of India

This definition is new

2 See Local Government defined by No 129 post p 21 By s 1 of the Government of India Act India shall be governed by and in the name of His Majesty” The Government, therefore is the Government of the Crown and servants of Government are servants of the Crown Compare the definition of “servant of the Queen” given by s 14 of the Indian Penal Code and the definition of Government given by s 17 of that Code as supplemented by s 263A (f) where a special extension is given to the term for a special purpose

(22) “Government of India” shall mean the Governor General in Council or during the absence of the Governor General from his Council the President in Council or the Governor General alone as regards the powers which may be

Government of India.”

fully

(General Definitions—Section 3)

lawfully exercised by them or him respectively

This definition reproduces the definition given by s 2 (9) of the General Clauses Act, 1868

2 Normally the executive government of India is carried on by the Governor General in Council—Ilbert's *Government of India* 3rd Ed p 202 But provision is made for the unavoidable absence of the Governor General, and there are certain matters in which the Governor General can act alone or in supersession of his Council (ss 42 & 43 of the Government of India Act) By s 1 of the Government of India Act, the territories for the time being vested in His Majesty in India are governed by and in the name of His Majesty the King Emperor of India For a historical survey of the powers of the Government of India see Ilbert's *Parliamentary Legislation in India*, 1922 Ed

• • • • •

4 High Court

(24) "High Court," used with reference to civil proceedings, shall mean the highest Civil Court of appeal in the part of British India in which the Act or Regulation containing the expression operates

This definition reproduces the definition given by s 2 (11) of the General Clauses Act, 1868 The effect of it is to include in the term High Court the various Judicial Commissioners and the Chief Court of Oudh, as well as the Chartered High Courts

2 The definition could not conveniently be extended to criminal proceedings because of the complicated provisions relating to European British subjects For criminal proceedings see s 1 (j) and s 266 of the Code of Criminal Procedure 1898 (Act V of 1898), and the notes in Henderson's edition

3 For the history and jurisdiction of the Chartered High Courts see Cowell's *Courts and Legislative Authorities in India* 2nd Ed, Chap X ss 101 to 114 of the Government of India Act, and Ilbert's *Government of India* Besides the three old High Courts at Calcutta Bombay and Madras Chartered High Courts have been established at Allahabad Lahore Patna and Rangoon For the charters of these High Courts see General Statute

to re

¹ Clause (11) was repealed by the Repealing and Amending Act 1919 (XXIII of 1919)

(General Definitions—Section 3)

tory Rules and Orders, Vol I, pp 96 173 published by the Legislative Department of the Government of India

- (25) "Immovable property" shall include ^{"Immovable property."} land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth

This definition reproduces the definition given by s 2 (5) of the General Clauses Act, 1865

2 As a general definition this is clearly the right one, but it is not always applicable. Growing crops and timber are for certain purposes treated as movables e.g. for registration purposes see s 2 (9) of the Indian Registration Act, 1908 (XVI of 1908). But for most purposes, until severed they would properly be treated as immovable property.

3 For movable property see No (34) *post*, p 26. The distinction between movable and immovable property corresponds roughly with the distinction in English law between personal and real property but the latter is complicated by rules which have survived from feudal times—see Williams *Real Property* 24th Ed p 6; Mayby's *Elements of Law* 6th Ed p 79, and Stokes' *Anglo Indian Codes* Vol I p 487. See also the terms immovable and real property compared by the Privy Council in *Madarasa Jauhar Sanghi v Dessai* (1873), L R 1 I A p 34 where it was held that a "tola gira's huq" was immovable property, resembling a freehold interest issuing out of real property in England. A *jallur* is immovable property—*Ramgopal v Voor Maharaj* (1892) I I R 20 Cal 446, so is a right of tenancy—*Krishna v Hindur* (1889) I L R 13 Mad 34 so is a *hut*—*Surindro Anan Singh v Bhat Lal* (1890) I L R 22 Cal 752. A suit for maintenance, which seems to have the maintenance made a charge on immovable property is not a suit for benefits to arise out of land within the meaning of this definition—*Beer Chunder Manikya v Raj Kumar* (1883) I I R 9 Cal 535.

4 The older Indian Acts used the English terms "real and personal property"—see e.g. the Indian Will Act 1838 (XXX of 1838) s 1.

The following have been held to be "immovable property" within the meaning of the section—*see* *supra* the *Illustrations* suggesting the press fastened to the ground and which have been used effectively without being fastened *Muzin K...*

(General Definitions—Section 3)

v *Sub Karan Kurmi* (1914) 23 I C 220, *U That v Tola Ram* (1917), 43 I C 62, a right of way, *Sital Chandra Clowdhar v Mrs A J Delannoy* (1916), 20 C W N 1108, *Bejoy Chandra Nag v Bunlu Behari Mazumder* (1909), 13 C W N 401, rents and profits, *Gulam Mohiuddin v Parbatu* (1909), I L R 36 Cal 66, trees, *Sukhmandan v Manalchand* (1910), 10 I C 473, standing crops, *Kotagiri Venkataramanujam v Patibanda Basarajya* (1913) 21 I C 213, a right of fishery *Shibu Halder v Gupi Sundari* (1897) I L R 24 Cal 449 *Fadu Jhala v Gour Mohan Jhala* (1892), I L R 19 Cal 544 *Sitaram v Petia* (1916) 43 I C 962

"Imprisonment."

(26) "imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code

XLV

This definition reproduces the definition given by s 2 (18) of the General Clauses Act, 1868

2 By s 53 of the Indian Penal Code "the punishments to which offenders are liable under the provisions of this Code are * * * imprisonment, which is of two descriptions namely (1) rigorous that is with hard labour (2) simple

3 The practical effect of this definition is that when an Act provides that an offence may be punished with imprisonment the Court may, in its discretion make the imprisonment either simple or rigorous. Similarly, the imprisonment awardable under s 488 of the Code of Criminal Procedure 1898 (v of 1893) may be either simple or rigorous—*Queen Empress v Narain* (1887), I L R 9 All 240

India

(27) "India" shall mean British India together with any territories of any Native Prince or Chief under the suzerainty of Her Majesty exercised through the Governor General of India or through any Governor or other officer subordinate to the Governor General of India

This definition is taken from s 18 (1) of the Interpretation Act 1889 (s 2 & 3 Act c 63). See 'British India' defined by No (7) *ante* p 9. In the older statutes the term "India" was often used in the narrower sense now given to the term British India—see s 1 of the Government of India Act 1858 (21 &

(General Definitions—Section 3)

22 Vict, c 106) See too Ilbert's *Government of India* pp 291 292

2 The present definition would probably include tribal territory under the suzerainty of His Majesty. For the term suzerainty see Holland's *Jurisprudence* 13th Ed pp 50 395. The term "India" does not include French and Portuguese territories which are Foreign States. Hence the use in more modern Acts of the expression "States in India" to denote what were formerly called "Native States."

(28) "local authority" shall mean a municipal committee district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund Local authority

This definition reproduces the definition given by s 3 (6) of the General Clauses Act, 1887. Compare the definition given by s 3 of the Cattle-trespass Act, 1871 (1 of 1871), s 2 of the Local Authorities Loans Act, 1914 (IX of 1914) and s 3 (7) of the Indian Telegraph Act 1885 (VIII of 1885). The expression "Government" is defined by No (21) *ante* p 19.

(29) "Local Government" shall mean the person authorized by law to administer executive government in the part of British India in which the Act or Regulation containing the expression operates and shall include a Chief Commissioner Local Government

This definition reproduces the definition given by s 2 (10) of the General Clauses Act 1869. Compare the definition in s 134 of the Government of India Act. For the powers of the Local Government see ss 41 to (2) of that Act. The word "person" is defined by No (14) *post* p 28 and "provinces" by No (41) *post* p 31.

2 At present there are seventeen Local Governments in British India namely the Governorships of Bengal Bombay, Madras the United Provinces the Punjab Bihar and Orissa Assam Burma and the Central Provinces (see s 16 of the Government of India Act, 1915), and the Chief Commissionerships of the North-West Frontier Province British Baluchistan D-Dli, Ajmer and Merwara,

(General Definitions—Section 3)

மேற்கூறிய Coorg, the Andaman and Nicobar Islands, the Pargana of Minpur, and Panth Piploa

"Madras Act."

(30) "Madras Act" shall mean an Act made by the Governor of Fort St George in Council under [the Indian Councils Act, 1861, or] the Indian Councils Acts 1861 and 1892 [or the Indian Councils Acts, 1861 to 1909] [or the Government of India Act, 1915] [or by the local legislature or the Governor of the Presidency of Madras under the Government of India Act]

With this definition of No (5), ante p 8, for the powers of local legislatures see post, pp 80 81

"Magistrate"

(31) "Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force

This definition reproduces the definition given by s 2 (13) of the General Clauses Act, 1863

2 On the identical words of the repealed definition it was held that the word "include" was enumerative and not exhaustive, and that a Village Munsif in Madras was a Magistrate within the meaning of s 26 of the Indian Evidence Act, 1872 (I of 1872)—*Empress v Ramanappa* (1878), 1 L R 2 Mad 5 So also a Magistrate of an Indian State—see *Queen-Empress v Nagla* 1 L R 22 Bom 235 *Queen-Empress v Sundar Singh* (1890), 1 L R 12 All 595 *Emperor v Daula Amru* (1914), 10 Bom L R 261 *Emperor v Anant Rao Phanse* (1922), 27 Bom L R, p 1034 To the like effect, see *Reg v Hermann* (1879) 4 Q B D, at p 283

3 S 3 (2) of the Code of Criminal Procedure, 1898 (V of 1898) explains that the expressions "officer exercising (or having) the powers (or the full powers) of a Magistrate,"

¹ The words were inserted by s 3 of the Amending Act, 1903 (I of 1903)

² The words were inserted by Sch I of the Repealing and Amending Act 1914 (X of 1914)

³ These words were added by s 2 and 1 Sch I of the Repealing and Amending Act 1917 (XXIV of 1917)

⁴ These words were added by s 2 and 1 Sch I of the Repealing and Amending Act 1923 (XXIII of 1923)

(General Definitions.—Section 3.)

Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," which occur in earlier enactments (e.g. Act V of 1861), are to be understood as meaning "Magistrate of the first class," "Magistrate of the second class" and "Magistrate of the third class," respectively. The obsolete expressions "Magistrate of a division of a district," "Magistrate of the district" and "Magistrate of Police" also are defined there.

- (52) "master", used with reference to a "Master"
ship, shall mean any person (except a ^(of a ship)
pilot or harbour-master) having for
the time being control or charge of the
ship :

This definition reproduces the definition given by s. 5 (8) of the General Clauses Act, 1887. Compare the definitions of "ship" and "vessel" in Nos. (51) and (56), *post*, pp. 35 and 38.

2 By s. 742 of the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), "master" includes every person (except a pilot) having command or charge of any ship, and "pilot" means any person not belonging to a ship who has the conduct thereof, and "seaman" includes every person (except masters, pilots and apprentices duly indentured and registered) employed in any capacity on board any ship. See *Scrutton's Merchant Shipping Act*, 1894, p. 648.

- (39) "month" shall mean a month reckoned "Month."
according to the British calendar.

This definition reproduces the definition given by s. 2 (4) of the General Clauses Act, 1868. This definition is only for the purposes of the Acts passed by the Indian legislature and is not applicable to contracts—*South British Fire and Marine Insurance Co. v. Brojo Nath Saha* (1909), I. L. R. 36 Cal. 516—nor to cases where the context shows a different meaning, e.g. a period of 30 days—*Tama Datta Desai v. Murugesa Mudali* (1905), I. L. R. 29 Mad. 75.

2 In Acts of Parliament passed before the end of the year 1850, "month," unless otherwise specially interpreted, means lunar month, but in Acts passed since that date, "month," unless the contrary intention appears, means solar month—see 13 & 14 Vict., c. 21 s. 4, reproduced now in s. 3 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63). For the meaning of the term in

to amounts

(General Definitions—Section 3)

Merwarri Coorg, the Andaman and Nicobar Islands, the Pargana of Manipur, and Panth Piploa

"Madras Act." (30) "Madras Act" shall mean an Act ^{24 & 25 Vict c 67} made by the Governor of Fort St George in Council under ^{24 & 25 Vict c 67, 65 & 50 Vict, c 14, 9 Edw. 7, c 4, 5 & 6 Geo 5, c 61} [the Indian Councils Act, 1861, or] the Indian Councils Acts, 1861 and 1892 ²[or the Indian Councils Acts, 1861 to 1909] ³[or the Government of India Act, 1915] ⁴[or by the local legislature or the Governor of the Presidency of Madras under the Government of India Act]

With this definition cf No (o), ante, p 8, for the power of local legislatures see post, pp 80 81

"Magistrate." (31) "Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force

This definition reproduces the definition given by s 2 (13) of the General Clauses Act, 1863

2 On the identical words of the repealed definition it was held that the word "include" was enumerative and not exhaustive, and that a Village Munsif in Madras was a Magistrate within the meaning of s 26 of the Indian Evidence Act, 1872 (1 of 1872)—*Empress v Ramanjappa* (1878), 1 L R 2 Mad 5. So also a Magistrate of an Indian State—see *Queen-Empress v Nagla*, 1 L R 22 Bom 235, *Queen-Empress v Sundar Singh* (1890), 1 L R 12 All 595 *Emperor v Dhanu Amra* (1914), 16 Bom L R 261 *Emperor v Inandrao Phanse* (1925), 27 Bom L R, p 1034. To the like effect, see *Reg v Hermann* (1879) 4 Q B D, at p 295.

3 S 3 (2) of the Code of Criminal Procedure, 1898 (V of 1898) explains that the expressions 'officer exercising (or having) the powers (or the full powers) of a Magistrate,'

¹ These words were inserted by s 3 of the Amending Act, 1903 (I of 1903).

² These words were inserted by Sch I of the Repealing and Amending Act 1914 (X of 1914).

³ These words were added by s 2 and Sch I of the Repealing and Amending Act 1917 (XXIV of 1917).

⁴ These words were added by s 2 and Sch I of the Repealing and Amending Act, 1925 (XXIII of 1925).

(General Definitions—Section 3)

Magistrate, ' " Subordinate Magistrate, first class " and ' Subordinate Magistrate, second class," which occur in earlier enactments (*e.g.* Act V of 1861), are to be understood as meaning " Magistrate of the first class,"

Magistrate of the second class " and " Magistrate of the third class," respectively. The obsolete expressions ' Magistrate of a division of a district,' ' Magistrate of the district ' and ' Magistrate of Police " also are defined there.

- (32) " master ", used with reference to a " Master " ship, shall mean any person (except a (of a ship). pilot or harbour-master) having for the time being control or charge of the ship

This definition reproduces the definition given by s. 3 (8) of the General Clauses Act, 1857. Compare the definitions of " ship " and " vessel " in Nos. (51) and (56), *post* pp. 35 and 38.

2 By s. 742 of the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), " master " includes every person (except a pilot) having command or charge of any ship, and " pilot " means any person not belonging to a ship who has the conduct thereof, and " seaman " includes every person (except masters, pilots and apprentices duly indentured and registered) employed in any capacity on board any ship. See Scrutton's *Merchant Shipping Act*, 1894, p. 548.

- (33) " month " shall mean a month reckoned " Month." according to the British calendar :

This definition reproduces the definition given by s. 2 (2) of the General Clauses Act, 1858. This definition is only for the purposes of the Acts passed by the Indian legislature and is not applicable to contracts—*South British Fire and Marine Insurance Co. v. Brojo Nath Saha* (1909), 1 L. R. 36 Cal. 516—nor to cases where the context shows a different meaning, *e.g.* a period of 30 days—*I am Dina Devalar v. Murugesu Mudali* (1905), 1 L. R. 29 Mad. 75.

2 In Acts of Parliament passed before the end of the year 1850, " month," unless otherwise specially interpreted, means lunar month, but in Acts passed since that date, " month," unless the contrary intention appears, means calendar month—see 13 & 14 Vict., c. 21, s. 4, reproduced now in s. 3 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63). For the meaning of the term in

documents

(General Definitions—Section 3)

documents other than statutory enactments, see Stroud's *Judicial Dictionary*, tit "month" Compare also *Dadu v Balgouda* (1868), 3 Bom H C R (A C J) 39, *Saroda Pershad v Pahali* (1884), 1 L R 10 Cal 913

Movable
property

(34) "movable property" shall mean property of every description, except immovable property

This definition reproduces the definition given by s 2 (6) of the General Clauses Act, 1868 Compare the definition of 'immovable property' in No (25), ante, p 21 The term "movable property" in India corresponds roughly with the term "personal property" in England for which see Williams' *Personal Property*, 18th Ed It includes both tangible property and intangible property, such as debts or other "actionable claims" for which see s 130 of the Transfer of Property Act 1882 (IV of 1882)

"Property"

2 It is to be noted that the term "property" is used in different senses, and its meaning must always be determined by the context

First it is used to denote anything capable of being owned in other words the subject matter of ownership Thus we speak of a house or a horse, or a bill of exchange, being the property of A B, meaning that he is the owner of the thing in question It is in this sense that the word is used in this Act and in the Transfer of Property Act, 1882 (IV of 1882)

Secondly, it is used to denote the right of ownership For instance, if a man lends a horse to a friend, the "property" in the horse is said to remain in the lender So, again, by a sale the "property" in the goods sold is said to pass from seller to buyer So too, lawyers speak of general and special "property" or rights of ownership Thus by a pledge the pledger is said to acquire a special "property" in the thing pledged, while the general "property" remains in the pledger

Thirdly, the term is used to denote anything valuable—"Things which can be turned into money or assessed at a money value, in other words, rights which may be exchanged for the ownership of money" It is in this last sense that the word "property" seems to be used when a man speaks of all his "property", or of his real as opposed to his personal, "property"—Williams' *Real Property*, 24th Ed p 3

3 Using the term "property" in the sense of the objects of ownership, a comprehensive definition of the word

(General Definitions — Section 3)

word is given by s. 165 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52) namely — *Property* includes money, goods, thing in action, land, and every description of property whether real or personal and whether situate in England or elsewhere, all obligations, easements and every description of estate, interest and profit, present or future, vested or contingent arising out of, or incident to property as above defined.

- (35) "North Western Provinces and Oudh Act" shall mean an Act made by the Lieutenant Governor of the North Western Provinces and Oudh in Council under [the Indian Councils Act, 1861, or] the Indian Councils Acts, 1861 and 1892.

* North Western Provinces and Oudh Act

25 Vict.
71, 65 &
71, 65 &
71, 65 &

With this definition of No. (5) *ante* p. 8, for the powers of local legislatures see *post* pp. 80, 81.

- (36) "oath" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.

This definition reproduces the definition given by s. 2 (17) of the General Clauses Act, 1863. Compare the definitions of 'affidavit' and 'swear' given in Nos. (1) and (5) and a similar definition given by s. 1 of the Interpretation Act, 1893 (52 & 53 Vict. c. 63). Where an English statute required "proof made upon oath" Lord Esher said — "I think that admits proof on affidavit, but is not confined to it." — *Ostorne v. Hillman* 56 L. J. Q. B. at p. 264 decided on s. 32 of the Solicitors Act 1843 (6 & 7 Vict. c. 73). For oaths in India see the Indian Oaths Act 1871 (X of 1871).

- (37) "offence" shall mean any act or omission made punishable by any law for the time being in force.

* Offence

This definition reproduces the definition given by s. 3 (9) of the General Clauses Act 1863. In view of the definition of 'act' *ante* p. 7 the words 'commission' are perhaps superfluous. For parallel definitions see s. 4 of the Indian Penal Code (XIV of 1860).

- (38) "Part"

The words were inserted by the Amending Act 1903 (VI of 1903).

(General Definitions—Section 3)

“Part”

(38) “Part” shall mean a Part of the Act or Regulation in which the word occurs

This definition reproduces the definition given by s 3 (2) of the General Clauses Act, 1897. Compare the definitions of “Chapter,” “schedule,” “section” and “sub section.”

“Person”

(39) “person” shall include any company or association or body of individuals, whether incorporated or not

This definition reproduces the definition given by s 2 (3) of the General Clauses Act, 1868. Compare s 13, *post* p 10 under which words in the singular number *prima facie* include the plural and *vice versa*.

2 The usual English form of the definition is that “person” includes a body of persons, corporate or unincorporate—s 19 of the Interpretation Act, 1889 (52 & 53 Vict., c 63). The rule thus stated appears to be declaratory, but it rather strengthens a weak common law presumption. As Lord Blackburn says: “The word ‘person’ may very well include both a natural person, a human being and an artificial person, a corporation. I think that in an Act of Parliament unless there be something to the contrary, probably (but that I should not like to pledge myself to) it ought to be held to include both. I have really no doubt that in common talk the language of men not speaking technically a ‘person’ does not include an artificial person that is to say a corporation. Nobody in common talk if he were asked who is the richest person in London would answer the London and North Western Railway Company. The thing is absurd. It is plain that in common conversation and ordinary speech a ‘person’ would mean a natural person. In technical language it may mean an artificial person in which way it is used in any particular Act must depend upon the context and the subject matter.”—*Pharmaceutical Society v. London Supply Association* [1890] 5 A C 47. See also *Toronto Corporation v. C. P. R.* [1908] A C 51. A company is a person—*Perumal Goundan v. Thirumalarayapuram* (1917) 1 L R 41 Mad 124. The Board of Karachi Port Trust was held to be “person” within the meaning of Bombay Act VI of 1886—*Praag Varan Buraq v. The Karachi Port Trust* (1910) 10 I C 972. A receiver appointed for a judgment debtor’s property is not a person within the meaning of s 3 Transfer of Property Act

(General Definitions—Section 3)

1882—*Mahamed Kasim Sahib v Panchapalesa* (1911), I L R 30 Mad 578. A "living person" within the meaning of s 5 of the Transfer of Property Act, 1882, was held to include a 'corporation' or a 'juristic person' such as an idol, and a definition has now been inserted to make this more clear. Whether the Secretary of State is not a 'person' within the meaning of Indian Acts—see Legislative Department A. Proceedings, December 1873, Nos 5 to 8. See also the English decisions collected in Stroud's *Judicial Dictionary*, tit "Person."

(40) "Political Agent" shall include—

"Political Agent"

(a) the principal officer representing the Government in any territory or place beyond the limits of British India, and

(b) any officer of the Government of India or of any Local Government appointed by the Government of India or the Local Government to exercise all or any of the powers of a Political Agent for any place not forming part of British India under the law for the time being in force relating to foreign jurisdiction and extradition.

This definition is taken from s 3 of the Foreign Jurisdiction and Extradition Act, 1879 (XXI of 1879), as amended by s 1 of Act V of 1896, but the words "shall include" have been substituted for the words "means and includes."

The British Trade Agent in Tibet is not a Political Agent within the meaning of the term.

(41) "Presidency town" shall mean the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay, as the case may be.

"Presidency town"

This definition was taken from s 4 (h) of the Code of Criminal Procedure, 1882 (X of 1882). Compare Madras Act I of 1891, s 3 (25), (local General Clauses Act).

2 For the Presidency-towns and the history of the jurisdiction of the old Supreme Courts, which now

(General Definitions—Section 3)

transferred to the High Courts, see the Indian Presidency towns Act 1815 (57 Geo 3, c 84) and Cowell's *Courts and Legislative Authorities in India*, 5th Ed pp 89 to 103

"Privy Council

(42) "Privy Council" shall mean the Lords and others for the time being of Her Majesty's Most Honourable Privy Council

This definition is taken from s 12 (c) of the Interpretation Act 1949 (62 & 53 Vict c 63)

2 For the history and functions of the Privy Council see Anson's *Law and Custom of the Constitution* Pt II and Cowell's *Courts and Legislative Authorities in India* 5th Ed Chap IX

3 The Judicial Committee of the Privy Council is the ultimate Court of Appeal for India. It was constituted on its present basis by the Judicial Committee Act 1833 (3 & 4 Will 4, c 41). For the practice and procedure in Privy Council appeals see Macpherson's *Privy Council Practice*. In addition to the appellate jurisdiction of the Privy Council it may be noted that His Majesty may, under s 4 of the Act of 1833 'refer to the said judicial committee for hearing or consideration any such other matters whatsoever as His Majesty shall think fit and such committee shall thereupon hear or consider the same and shall advise His Majesty thereon in manner aforesaid'

"Province

(43) "Province" shall mean the territories for the time being administered by any Local Government

This definition was taken from s 4 (g) of the Code of Criminal Procedure 1882 (Act X of 1882). For the definition of "Local Government" see s 29 ante p 23

"Public nuisance

(44) "Public nuisance" shall mean a public nuisance as defined in the Indian Penal Code

XXV of 1860

This definition reproduces the definition given in s 3 (10) General Clauses Act 1857

■ By section 268 of the Indian Penal Code (XLV of 1860) "a person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to people in general who dwell or occupy property in the vicinity

(General Definitions—Section 3)

vicinity, or which must necessarily cause injury, obstruction danger or annoyance to persons who may have occasion to use any public right. A common (public?) nuisance is not excused on the ground that it causes some convenience or advantage."

3 For the procedure in a case of public nuisance, see Chap. V of the Code of Criminal Procedure, 1898 (V of 1898). See also s. 91, Code of Civil Procedure (V of 1908). The whole law of public nuisance is discussed in *Mayne's Criminal Law of India*, 4th Ed., at pp. 163, 426 to 436.

¹ [(44a) "Punjab Act" shall mean an Act "Punjab Act," made by the Lieutenant Governor of the Punjab in Council under the Indian Councils Acts, 1861 and 1892] ² [or the Indian Councils Acts, 1861 1909] ³ [or the Government of India Act, 1915] ⁴ [or by the local Legislature or the Governor of the Punjab under the Government of India Act.]

(45) "registered", used with reference to a "registered" document, shall mean registered in British India under the law for the time being in force for the registration of documents.

This definition reproduces the definition given by s. 3 (11) of the General Clauses Act, 1897. Compare Madras Act I of 1891, s. 3 (28) and Bengal Act I of 1899 s. 3 (14) (local General Clauses Acts).

2 The present law in force is the Indian Registration Act 1908 (XVI of 1908), as amended by subsequent enactments.

(46) "Regulation" shall mean a Regulation "Regulation" made under the Government of India Act 1870 [or the Government of India Act 1915] ⁴ [or the Government of India Act.]

The

¹ This clause was inserted by s. 3 of the Amending Act 1911 (I of 1911).

² These words were inserted by Sec. 1 of the Repealing and Amending Act 1914 (X of 1914).

³ These words were inserted by s. 2 and Sch. I of the Repealing and Amending Act 1917 (XXIV of 1917).

⁴ These words were added by s. 2 and Sch. I of the Repealing and Amending Act 1928 (XXIII of 1928).

(General Definitions—Section 3)

The object of this definition is to distinguish Regulations made under ss 1 and 2 of the Government of India Act, 1870 (33 & 34 Vict, c 3) corresponding to s 71 of the Government of India Act from—(1) rules made under the powers given by an Act which are some times called "regulations" and (2) the old Bengal, Madras and Bombay Regulations made prior to 1834 for which see *post*, pp 71-73

2 The Government of India Act 1870, above referred to, was passed in order to provide a more summary procedure for the making, by the Governor General in (Executive) Council, of laws for the peace and good government of the more backward parts of British India. For laws so made see *post* pp 78-79, and *Albert's Government of India* 3rd Ed pp 238-239

"Rule"

(47) "rule" shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment

This definition is intended to mark off statutory rules from non-statutory rules. The provisions of ss 20 to 24 *post* pp 58-61 apply to rules as above defined

2 Some English Acts—e.g. the Supreme Court of Judicature Act, 1873 (36 & 37 Vict c 66) s 100—expressly declare that "rules" include "forms". There is no substantial distinction between rules and bye laws. Compare the definition in the Rules Publication Act, 1893 (56 & 57 Vict c 66). They are to be construed as part of the Act or statute under which they are made—*Institute of Patent Agents v Lockwood* [1894] A C 347. Rules however, must strictly be within the scope of the Act under which they are made. It is immaterial that they have the effect of abrogating the provisions of any other Act—*Secretary of State v Bhaskar* (1925) 27 Bom L R 973. They have the force of law whether the Act under which they are made contains an express provision to that effect or not. The words in the rules have the same meaning as in the Act

"Schedule"

(48) "schedule" shall mean a schedule to the Act or Regulation in which the word occurs

This definition reproduces the definition given by s 3 (2) of the General Clauses Act 1857. Compare the definitions of "Chapter," "Part," "section" and "sub-section"

(General Definitions—Section 3)

2 In England, where a provision in a schedule was repugnant to a provision in the body of the enactment, the latter was held to prevail—*Maricell on Statutes*, 6th Ed p 283. A form given in a schedule is regarded rather as an illustration and not as controlling the substantive enactment. "A schedule in an Act," says Lord Esher, "is a mere question of drafting. The schedule is as much a part of the statute, and is as much an enactment, as any other part"—*Attorney General v. Lamplough* (1878), 3 Ex D 214, at p 229. *Craies on Statute Law*, 3rd Ed, pp 200 and 201.

(49) "Scheduled District" shall mean a "Scheduled District" as defined in the Scheduled Districts Act, 1874

XIV of 1874

The Indian Statute-book has, from the earliest times, contained "de-regulationizing" enactments, i.e. enactments barring completely or partially, the application in the more backward and less civilized parts of the country of the ordinary law, which was at first contained in the old "Regulations." These enactments took varied and sometimes extremely complicated forms, so that, in course of time, doubts arose and it became occasionally a matter of considerable difficulty to ascertain what laws were, and what were not, in force in the different "de-regulationized" tracts. The main object of the Scheduled Districts Act, 1874 (XIV of 1874), was to provide a method of removing these doubts by means of notifications to be issued by the Executive Government. The preamble refers to the fact that "various parts of British India had never been brought within, or had from time to time been removed from the operation of the General Acts and Regulations and the jurisdiction of the ordinary Courts of Judicature", that "doubts had arisen in some cases as to which Acts or Regulations were in force in such parts and in other cases as to what were the boundaries of such parts", and that it was "expedient to provide readier means for ascertaining the enactments in force in such territories and the boundaries thereof, and for administering the law therein." The Act then proceeds to specify and constitute a number of de-regulationized tracts as "Scheduled Districts" a term declared to include any territories to which the provisions of s 1 of the Government of India Act 1870 (33 & 34 Vict, c 3)—for which see *post*, pp 78-79—may be made applicable, to take power (see s 3) to declare by notification what enactments are, or are not actually in force in any "Scheduled District"; and to provide for extending

(General Definitions —Section 3)

extending by notification (see ss. 5 and 5A) to any 'Scheduled District' with or without modifications or restrictions any enactment in force in any part of British India at the date of such extension. It also takes powers to appoint officers for the administration of a Scheduled District and to regulate their procedure and the exercise of their powers therein and, further, to settle questions as to the boundaries of any such tract. A very large number of declaratory and extending enactments under ss. 3 and 5 respectively of the Act have been issued and the powers conferred by those sections on the Executive Government continue to be freely resorted to as occasion arises. For an example of such a notification see *post* p. 113.

Laws Local
Extent Act,
1874

2 The Laws Local Extent Act, 1874 (XV of 1874), also contains a definition of the same expression, but it and the Act immediately preceding it in the Statute book must not be confounded. The later Act (XV of 1874) removed doubts as to the application of certain enactments to the whole or particular parts of British India other than the territories specified in the sixth schedule as 'Scheduled Districts' for the purposes of that Act, in respect to which no declaration was made. When the two Acts (XIV and XV) of 1874 first became law, the lists of Scheduled Districts appended were identical but they have not remained so. There have, since 1874 been passed twelve Acts and three Regulations which have amended or partially repealed the list in the Scheduled Districts Act but some only of these have made corresponding alterations in the list annexed to the Laws Local Extent Act, while certain places to which the provisions of s. 1 of the Government of India Act 1870 (33 & 34 Vict. c. 3) have been declared applicable have *ipso facto* become "Scheduled Districts" for the purposes of the Scheduled Districts Act but not within the meaning of the Laws Local Extent Act.

"Section"

(50) "section" shall mean a section of the Act or Regulation in which the word occurs

This definition reproduces the definition given by s. 2 (1c) of the General Clauses Act, 1868. Compare the definitions of "Chapter" "Part" "schedule" and "sub section."

2 Before 1850 it was usual in England (and India) to prefix each distinct portion of an Act by words of enactment and division into sections had no legislative sanction

(General Definitions—Section 3)

tion By 13 & 14 Vict, c 21, s 2 it is provided that

all Acts shall be divided into sections if there be more enactments than one which sections shall be deemed to be substantive enactments without any introductory words, and by s 8 of the Interpretation Act, 1889 (52 & 53 Vict, c 63), it is provided that 'every section of an Act shall have effect as a substantive enactment without introductory words. The provision for division into sections was a mere directory indication to draftsman. There is not any rule as to how many different sentences, each containing a substantive enactment, may be comprised in one section and it is clear that whether an enactment be printed as part of one section or made in another section can make no difference in the construction of the statute.—*Clarks on Statute Int* 3d Ed p 194

3 In English and also in Indian legislation it is "Clause" usual now to distinguish the term 'clause' from the term section by using the former to denote the paragraph when in a Bill the latter to denote it in an Act. But the use is often used for section in decisions on construction.—*Ibid*, p 194

4 In Indian Acts 'clause' and 'sub-clause' are also invariably used to denote subdivisions of sections and clauses respectively.

5 In other documents the term "clause" is used to denote a substantive provision. Thus as Lord Selborne says a clause in a will is any "collection of words in a will which, when removed out of a will, will leave the rest of the will intelligible."—*Scrimm v Bailey* [1879] 4 A C 70 at p 77

(51) "ship" shall include every description "ship" of vessel used in navigation not exclusively propelled by oars

This definition reproduces the definition given by s 3 (7) of the General Clauses Act, 1857. It corresponds with the definition given by s 742 of the Merchant Shipping Act 1894 (57 & 58 Vict, c 60), and is supplemented by the definition of "vessel" No (56) *post* p 39

2 In nautical language 'ship' means a sailing vessel of a particular rig but in legislation the term is used in its popular sense. For the English cases discussing the term see Stroud's *Judicial Dictionary*, tit "Ship"

(52) "sign" with its grammatical variations and cognate expressions shall, with reference to a person who is unable

(General Definitions—Section 3)

able to write his name, include "mark", with its grammatical variations and cognate expressions

This definition reproduces the definition given by s 3 (12) of the General Clauses Act, 1837 Compare the definition of 'writing', No (58), *post* p 39

2 The definition, it is to be noted, merely includes signature by mark, and does not define signature itself

3 A signature may be described as the writing of a person's name with the intention of authenticating a document—*Mathura Das v Babu Lal* (1878) 1 L R 1 All at p 683 *Gangadharrao Venkatesh v Shridra mapu Balapa* (1893), 1 L R 18 Bom 586 and *Gur Sarai Ram v Sadul Muhammad* (1883), 18 P R 566

A signature is the writing or otherwise affixing a person's name or a mark to represent his name, by himself or by his authority with the intention of authenticating a document as being that of or as binding on the person whose name or mark is so written or affixed It may appear in any part of the document *Ezekiel & Co v Innada Charan Sen* (1922), 1 L R 50 Cal 180 No general rule can be laid down as to the sufficiency of a signature in any particular case

4 In India it has been held that the writing by a Rajah of his title might constitute a sufficient signature to a lease—*Gunee Biswas v Sreegoval Choudhry* (1867) 8 W R 395, in

criminal process *Dedar Aushyo* (1870)

Queen (1883) 1 L R 6 Mad 396 But by s 2 of the Code of Civil Procedure (Act XIV of 1882) [now s 2 (20) of the Code of 1908] "signed" included 'stamped with the name of the person referred to' and it was held that an initialed warrant was "signed" within the meaning of s 251 of that Code—*Queen Empress v Janki Prasad* (1886) 1 L R 8 All 293 See also *Airmal Chander Bandopadhyaya v Saratmoni Delyu* (1898), 1 L R 25 Cal, at p 915, where it was held that the affixing of a testator's name by a fac simile stamp was sufficient to meet the requirements of s 50 of the Indian Succession Act, 1869 (X of 1869) On the other hand it has been held that an initialed warrant was not "signed" within the meaning of s 75 of the Code of Criminal Procedure, 1898 (Act V of 1898)—*Udul Gafur v Queen Empress* (1896) 1 L R 23 Cal 896

5 In England a pencil signature to a bill of exchange has been held sufficient, and it has been suggested that

(General Definitions—Section 3)

that a lithographed or stamped signature might be sufficient. A signature made by another person but attested by mark is sufficient. Where a promissory note ran—

I William Smith promise to pay, etc., instead of

I promise to pay with the signature appended, it was held sufficiently signed. Where a statute requires a [non-commercial] document or contract to be signed a mere mark, or initials or a stamp, if intended as signatures, are sufficient and it is immaterial in what part of the document the name is introduced provided it governs the whole—*Chalmers on Bills of Exchange*, 9th Ed., p. 329, and cases there cited. In *Bennett v Brumfitt* (1867), L R 3 C P 28 Willes, J., remarked that “the using a stamp is only a compendious way of writing the party's name” and in *The Queen v Couper* (1890), L R 24 Q B D at p. 535, Lord Esher, M R., said —“I know of no case, with the exception of a will in which, if a man's name is put down by him with the intent that it shall be treated as his signature that is insufficient because it is not in his handwriting. See further Stroud's *Judicial Dictionary* tit. ‘Signature’ 2nd Ed., and *Jenkyns v Gaisford* (1863) 32 L J P1 122

(53) “son”, in the case of any one whose “son” personal law permits adoption, shall include an adopted son

This definition reproduces the definition given by s. 2 (10) of the General Clauses Act 1868. Compare the definition of ‘father’ in No. (18), ante, p. 16, and the note thereto.

(54) “sub section” shall mean a sub section of the section in which the word occurs. Sub section

This definition reproduces the definition given by s. 3 (3) of the General Clauses Act, 1887. Compare the definitions of “Chapter,” “Part,” “schedule” and “section.”

(55) “swear”, with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing. Swear

This definition is taken from the definition given by s. 2 (17) of the General Clauses Act, 1887. Compare the definitions of “affirm” and “oath” ante pp. 7 and 27 for oaths in India see the Indian Oaths Act 1873 (X of 1873)

[(55a) “United

(General Definitions—Section 3)

"United
Provinces
Act"

¹[(55a) "United Provinces Act" shall mean an Act made by the Lieutenant Governor of the North Western Provinces and Oudh (or of the United Provinces of Agra and Oudh) in Council under the Indian Councils Act, 1861, or the Indian Councils Acts 1861 and 1892] ²[or the Indian Councils Acts 1861 to 1909] ³[or the Government of India Act 1915] ⁴[or by the local Legislature or the Governor of the United Provinces under the Government of India Act]

24 & 25 Vict
c. 67, 53 &
56 Vict c
14 9 Edw 7,
c 4, 5 & 6
Geo 5 c 61

"Vessel"

(56) "vessel" shall include any ship or boat or any other description of vessel used in navigation

This definition is taken from s 742 of the Merchant Shipping Act 1904 (57 & 58 Vict c 60). It supplements the definition of "ship" in No (51) *ante*, p 35.

2 By s 48 of the Indian Penal Code (XLV of 1860), 'the word 'vessel' denotes any thing made for the conveyance by water of human beings or of property

"Will"

(57) "will" shall include a codicil and every writing making a voluntary posthumous disposition of property

This definition reproduces the definition given by s 2 (16) of the General Clauses Act, 1868, except that the word 'disposition' has been substituted for the word "distribution"

2 For the force of the word "include," which is to be construed as enumerative and not as exhaustive see *Empress v R in anjya* (1878) 1 L R 2 Mad 5

3 By s 2 of the Indian Succession Act, 1925, (XVIII of 1925) "will" means the legal declaration of the intentions of the testator with respect to his property, which he desires

¹ This clause was inserted by s 3 of the Amending Act 1903 (I of 1903)

² These words were inserted by Sch I of the Repealing and Amending Act 1914 (X of 1914)

³ These words were added by s 2 and Sch I of the Repealing and Amending Act 1917 (XXIV of 1917)

⁴ These words were added by s 2 and Sch I of the Repealing and Amending Act 1923 (XXIII of 1923)

(General Definitions.—Sections 3-4.)

desires to be carried into effect after his death, and "codicil" means an instrument made in relation to a will and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will.

4 In English law "a last will and testament is defined to be the just sentence of our will touching what we would have done after our death and in strictness the definition might perhaps be narrowed by adding respecting personal estate, for a devise of *lands* is considered by our Courts not so much in the nature of a testament as of a conveyance by way of appointment of particular lands to a particular devisee"—*Williams on Executors*, 11th Ed Vol I p 4 but, for wills since 1837, see the Wills Act 1837 (1 Vict, c 26)

(58) expressions referring to "writing" "Writing" shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form and

This definition is taken from s 20 of the Interpretation Act, 1889 (52 & 53 Vict, c 63). Compare the former definition given by s 3 (74) of the General Clauses Act, 1897

2 For English decisions on the term, see Stroud's *Judicial Dictionary*, tit "writing"

3 As to finger-impressions, which are for certain purposes placed on the same footing as hand-writing, see ss 45 and 73 of the Indian Evidence Act, 1872 (I of 1872)

(59) "year" shall mean a year reckoned "Year" according to the British calendar

This definition reproduces the definition given by s 2 (4) of the General Clauses Act 1869. Compare the definition of the "anniversary" in No (19), *ante*, p 16

2 See the English cases collected in Stroud's *Judicial Dictionary*, tit "year". For the computation of time, see s 10 *post*, p 49

4. (1) The definitions in section 3 of the following words and expressions, that is to say, "affidavit", "barrister", "British India", "District Judge", "father", "Government of India", * * *, "High Court", "immoveable property",

Application of foregoing definitions to previous enactments

* The words "Her Majesty" or "the Queen" were repealed by the Repealing and Amending Act, 1919 (XVIII of 1919)

(General Definitions —Section 4)

property", "imprisonment", "Local Government", "Magistrate", "month", "moveable property", "oath", "person", "section", "son", "swear", "will" and "year" apply also, unless there is anything repugnant in the subject or context, to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887

(2) The definitions in the said section of the following words and expressions, that is to say, "abet", "Chapter", "commencement", "financial year", "local authority", "master", "offence", "Part", "public nuisance", "registered", "schedule", "ship", "sign", "sub section" and "writing", apply also, unless there is anything repugnant in the subject or context, to all Acts of the Governor General in Council and Regulations made on or after the fourteenth day of January, 1887

This section preserves the effect of the definitions given by the repealed General Clauses Acts of 1868 and 1887 as regards the Acts and Regulations to which they respectively applied, and avoids reference to the repealed definitions

2 By s 10 of the General Clauses Act, 1887 (I of 1887) the definitions given in the General Clauses Act, 1868 (I of 1868), which applied only to Acts, were extended also to Regulations made after its commencement. The further definitions contained in the Act of 1887 applied to both Acts and Regulations made after its commencement

3 The General Clauses Act, 1887 (I of 1887), s 3 (13), contained the following definition of "value" —

"Value" " ' Value,' used with reference to a suit, shall mean the amount or value of the subject-matter of the suit "

This definition was cut out of the Bill in Select Committee, as the term is used in different Acts with different meanings and no general definition would be appropriate

"Admiralty Court"

4 By s 3 of the Colonial Courts of Admiralty (India) Act, 1891 (XVI of 1891), "the expressions 'Court having Admiralty Jurisdiction' and 'Admiralty Court' and the expressions 'Admiralty or Vice Admiralty cause,' and other

*(General Definitions —Section 4 General Rules
of Construction —Section 5)*

other expressions referring to Admiralty or Vice-Admiralty Courts or causes, shall, wherever any such expression occurs in any enactment of the Governor General in Council, or of a Governor in Council or Lieutenant Governor in Council be deemed to include a Colonial Court of Admiralty and a Colonial Court of Admiralty cause, and to refer to a Colonial Court of Admiralty or a Colonial Court of Admiralty cause, respectively "

It was not thought necessary to include this definition in this Act

General Rules of Construction

5. (1) Where any Act of the Governor General in Council is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent of the Governor General

Coming into
operation of
enactments

¹[(2) Where any Act of the Governor General in Council is reserved, under section 68 of the Government of India Act, 1915, for the signification of His Majesty's pleasure thereon, then, if no later date is expressed, it shall come into operation, if assented to by His Majesty, on the day on which that assent is duly notified]

(3) Unless the contrary is expressed, an Act of the Governor General in Council or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement

Sub-sections (1) and (2) give rules for determining the day on which any given enactment is to come into force

2 The assent copy of every Act, signed by the Governor General is kept in the Legislative Department and the Act Brs 57 of the of 1872) the Courts are laws or rules having the force of law There appears to be no statutory obligation to

¹ This sub section was substituted by s 4 and Sch I of the Repealing and Amending Act 1917 (XXIV of 1917)

(General Rules of Construction—Sections 5 & 6)

to publish Acts in the official Gazette, but, as a matter of practice, this is always done without delay, and the Gazette copy is *prima facie* evidence of the correctness of the text—see ss 81 and 84 of Act I of 1872. They are re-published in convenient form by the Legislative Department.

¶ Sub section (3) is taken from s 36 (2) of the Interpretation Act, 1889 (52 & 53 Vict, c 63), and it adopts the principle that, generally, the law takes no cognizance of fractions of a day—*Maruelli on Statutes*, 6th Ed, p 609. Suppose, then, an Act provides that it is to come into force on the 1st of January. It will become operative as soon as the clock has struck twelve on the night of the 31st December, and it would be immaterial if it could be shown that the Governor General did not give his assent to it till 2 p.m. on the 1st of January. The old English rule was that every Act, not expressing the contrary, was deemed to come into operation as from the first day of the session in which it was passed, because by a fiction of law the whole session was considered as one day. But this absurdity was abolished in 1793 by the 33 Geo 3 c 13. There is no illegality in giving assent on a Sunday. The Sunday Observance Act (29 Car 2 Ch 7) does not apply to India—*Lalcl and Balkisun v Kersten* (1890), 1 L R 10 Bom 378.

Printing errors in an Act assented to (i.e., clerical errors) were formerly corrected by the necessary *Corrigenda* or *Errata* notifications in the Gazette. Such a practice however is irregular and is not now followed. Mere printing errors may be corrected by hand.

4 For the power to make rules orders and appointments between the passing and commencement of an Act which does not come into force at once see s 22 post p 59 (s 37 of the Interpretation Act).

5 For the fraction-of-a-day rule and its exceptions, see *Campbell v Strangeways* (1877) 1 L R 3 C P D 10, *Tamlinson v Bulloud* (1879), 4 Q B D at p 232 and *Re Sleight & Supply Co* (1885) 1 L R 29 Ch D at p 201.

6 Where this Act or any Act of the Governor General in Council or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made then
unless

(General Rules of Construction —Section 6)

unless a different intention appears, the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed, or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act or Regulation had not been passed

This section is taken from s. 38 of the Interpretation Act 1889 (32 & 33 Vict. c. 63). It will not apply when an enactment expressly provides or when it is the intention of the legislature that existing rights should be affected—*Roberts v. Potts* (1893) 2 Q. B. 33 and (1894) 1 Q. B. 213.

2. By s. 6 of the General Clauses Act 1868 (1 of 1868) it was provided that "the repeal of any statute, Act or Regulation shall not affect anything done or any offence committed, or any fine or penalty incurred or any proceeding commenced, before the repealing Act shall have come into operation."

3. Clause (a) applies to any Act, law or right. It requires very clear and unmistakable language in a subsequent Act to revive or recreate an expired right—*Laurie v. Renard* (1892) 1 Ch. 402; *Guyane v. Drewitt* (1894) 2 Ch. 616. See also *Craies on Statute Law* 3rd Ed. p. 292.

(General Rules of Construction—Section 6)

4 In *Heston and Isleworth Urban Council v Grant* (1897), 2 Ch 306, it was held that notice given under an Act which was subsequently repealed remained in force and that the liability incurred by virtue of that notice could be enforced. It is well established that the law as it exists when the action commenced decides the rights of the parties in the suit unless the legislature expresses a clear intention to vary the relation of litigant parties to each other—*Hetchcock v Hay* (1837) 6 A & E 943 at p 951, *Moon v Durden* (1848), 2 Ex 22, at p 43, *Smithies v National Association of Operative Plasterers* (1909), 1 K B 310 at p 319.

5 The general rule of the common law is that a statute is not to be construed retrospectively unless in plain words it has been made retrospective. So this rule there was the exception of statutes regulating the practice and procedure of the Courts. "No suitor, says Mellish, L J, "has any vested interest in the course of procedure, nor any right to complain if, during the litigation, the procedure is changed, provided of course that no injustice is done." Alterations in the procedure are always retrospective unless there be some good reason against it—*Hajrat Akramnissa v Ialulnissa* (1894) 1 L R 18 Bom 420, *Balkrishna v Bapu Yesaji* (1894) 1 L R 19 Bom 204, *Girish Chandra Basu v Apurba Krishna Dass* (1894) 1 L R 21 Cal 940, *Bereswear v Javoda Lal* (1913), 1 L R 40 Cal 704. A statute dealing with procedure only, unless the contrary is expressed, applies to all actions, whether commenced before or after the passing of the statute. This rule applies even if the statute shortens or extends the period of limitation prescribed for the institution of an action—*Rex v Chandra* (1905) 2 K B 335 at pp 338, 339. See *Beale on Legal Interpretation*, p 470 3rd Ed. But a new statute of limitation cannot disturb the title already acquired or revive one already extinguished—*Ahunnai Ial v Gobind Krishna* (1911), 1 L R 33 All 356 (P C), *Mahomed Meh* 37 Bom 393, *Gajaldas v* 1 L R 1420, *Induraj v Shi* at p 471. It is doubtful if a decree is deemed to be a right within the meaning of s 6, *Manohar Ial v Sadiqa Begam* (1916), 37 I C 292. A rule of limitation not being a rule of substantive law is not preserved by s 6, *Ibrahim Kali Iimma v Pelappakalan* (1910), 1 L R 34 Mad 292. S 6 applies only where the change in the law is the result of the repeal of an old enactment and does not extend when it

(General Rules of Construction —Section 6)

is due to an addition to it—*Jagdanund v Imrita Lal* (1891) 1 L R 22 Cal 767, *Hemandas v Challaram* (1910) 13 I C 264. An acknowledgment of liability only extends the period of limitation and does not confer title and is not a thing done under s 6 (b)—*Soni Ram v Koulaiya Lal* (1913) 1 I R 30 All 227 (P C), *Hope Mills Ltd v Ellis* (1910) 12 Bom L R 730, *Tirumalurami v Subramanian* (1916) 1 L R 40 Mad 1009. A liability incurred under a repealed Act cannot be enforced by means of the procedure laid down by the repealing Act—*Republic of Costa Rica v Erlanger* (1873), L R 1 Ch D 62 at p 69 *Heston and Isleworth Urban Council v Grant* (1897) L R 2 Ch D 306 *Young v Adam* [1898] L R 4 C 469, and *Watwell on Statutes*, 6th Ed p 400.

6 The Act of 1897 expressly saved proceedings commenced before the repealing Act came into force. The Act of 1897 following the English statute of 1889, saves not only rights and obligations accrued before the repeal, but also the procedure to give effect to them.

7 In the future if a procedure Act is repealed and a new procedure is substituted, the proper course will be to provide expressly how far the new procedure is to apply to pending proceedings, and to proceedings thereafter to be instituted to give effect to rights and obligations already accrued.

8 For the repeal of an Act which modifies or amends a former Act, see *Glaholm v Barker* (1865) L R 1 Ch App 223, at p 229, and *cf* the Contonments Act, 1897 (XX of 1897).

9 This section does not extend to rules made under an Act, for which the common law doctrine above referred to seems to have been usually relied upon, no express saving being declared as regards anything done under superseded statutory rules. Rules made under an Act which is repealed are repealed with the repeal of the power under which they are made.

10 A mere right existing at the date of a repealing statute to the advantage of the provisions of the statute repealed is not a "right accrued" within the meaning of the saving clause—*Ubbot v Minister of Lands* [1891] A C 42, *Reynolds v Att Genl for Nova Scotia* [1896] A C 240. But see *Hamilton Gell v White* (1922) 2 K B 422, in which it was held that the repeal of the Agricultural Holdings

(General Rules of Construction—Sections 6-7)

Act does not affect the right to compensation which the tenant may have acquired under the Act. See also *Lambton and Hutton Collieries v Secretary for Board of Trade Mines Department* (1922) and (1923) 1 Ch 586. In *Malar Ali v Sarfuddin* (1922), 1 L R 50 Cal 115, where a right had accrued through an execution sale under the old Code, it was held it should be determined according to the provisions of the old Code. The right of appeal is not a mere matter of procedure—*Colonial Sugar Co v Irving* [1905] A C 369. An appeal is included in the term proceedings *Harrosundari Dabi v Bhojohari Das Manji* (1886), 1 L R 13 Cal 86. The right of a person to apply to higher authorities for sanction is not a mere matter of procedure and is not affected by a later amending statute in the absence of a specific provision—*Ramkrishna Ayyer v Sethai* (1924) 1 L R 48 Mad 620.

Revival of re-
pealed enact-
ments

7. (1) In any Act of the Governor General in Council or Regulation made after the commencement of this Act, it shall be necessary, for the purpose of reviving either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

(2) This section applies also to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

Sub-section (1) is taken from s 3 (1) of the General Clauses Act, 1868 (1 of 1868), as amended by s 9 of the General Clauses Act 1887 (1 of 1887). Compare s 11 of the Interpretation Act 1889 (52 & 53 Vict., c 63). To revive a repealed statute it is necessary to state an intention to do so—*In re Jera Vathio* (1916) 1 L R 44 Cal 459.

2. The English common law rule was that when an Act which repealed another Act was itself repealed, the first Act was thereby revived *ab initio*. This rule was abrogated by statute in 1800, and the principle laid down by sub-section (1) is the same as in England—*Deputy Local Commissioner v Wood* 111 (1897) 1 L R 21 Cal 333. See also *Glaholm v Barber* (1865) L R 1 Ch App at 1 229 and *Hari Maladaji Savarkar v Balar Nat Rajlunatl Klare* (1881) 1 L R 9 Ben 233.

(General Rules of Construction—Sections 72)

3 Subsection (2) saves the effect of the General Clauses Acts 1868 & 1887, on Acts and Regulations passed before the commencement of this Act

[8 (1)] Where this Act, or any Act of the Governor General in Council or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall unless a different intention appears be construed as references to the provision so re-enacted

Construction of references to repealed enactments

This section is taken from s 36 (1) of the Interpretation Act 1889 (52 & 53 Vict c 63)

2 It enacts as a general rule a provision which is commonly inserted in Acts (see, for instance s 3 of the Code of Criminal Procedure 1899) but which is sometimes forgotten

Its operation may be illustrated as follows Suppose the Acts amending the Indian Penal Code were consolidated and in the new Code s 188 (disobedience to orders of public servants) became s 200 Then any Act or document which referred to s 188 of the old Code would have to be construed as referring to s 200 of the new Code It is doubtful whether the word instrument in this section applies to notifications Thus if a notification under the Scheduled Districts Act 1874 has been issued extending an Act to a particular area and if that Act is subsequently repealed it is doubtful whether a fresh notification is necessary extending the new Act which takes the place of the old one

[2] (2) Where any Act of Parliament repeals and re-enacts, with or without modification any provision of a former enactment, then references in any Act of the Governor General in Council or in any Regulation or instrument to the provision so repealed shall unless a different intention appears be construed as references to the provision so re-enacted]

9. (1) In any Act of the Governor General in Council or Regulation made after the commencement of this Act

Commencement and termination of time

This section was re-numbered by the repealing and Amending Act 1919 (XVIII of 1919)

This subsection was added by the repealing and Amending Act 1919 (XVIII of 1919)

(General Rules of Construction —Sections 9-10)

ment of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to"

(2) This section applies also to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887

This section reproduces the provision of s. 3 (2) and (3) of the General Clauses Act 1868 (I of 1868)

2 Compare the English R S C Or LIV, r 12 — "In any case in which any particular number of days, not expressed to be clear days, is prescribed by these Rules, the same shall be reckoned exclusively of the first day and inclusively of the last day." See, also *Re Sleepers Supply Co* (1883) L R 29 Ch D 204

3 The rule in England for the construction of non-
Thus, where
elve calendar
eld to cover an
accident which took place on November 24, 1888, that
is to say, in computing the time November 24, 1887, was
excluded—*South Staffordshire Tramways Company v
Sickness and Accident Assurance Association* (1891), 1
Q B 402

Computation
of time

10. (1) Where, by any Act of the Governor General in Council or Regulation made after the commencement of this Act, any Act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period the Act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877, applies

XV of 1877

(2) This

(General Rules of Construction—Sections 9-10)

ment of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to"

(2) This section applies also to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887

This section reproduces the provision of s. 3 (2) and (3) of the General Clauses Act, 1869 (I of 1868)

2 Compare the English R S O Or LIV, r 12 — "In any case in which any particular number of days, not expressed to be clear days, is prescribed by these Rules, the time shall be reckoned exclusively of the first day and inclusively of the last day" See, also *Re Sleepers Supply Co* (1895) L R 29 Ch D 204

3 The rule in England for the construction of non-
Thus, where
twelve calendar
eld to cover an
accident which took place on November 24, 1888, that
is to say, in computing the time November 24, 1887, was
excluded—*South Staffordshire Tramways Company v
Sickness and Accident Assurance Association* (1891), 1
Q B 402

Computation
of time

10. (1) Where, by any Act of the Governor General in Council or Regulation made after the commencement of this Act, any Act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period the Act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877, applies

XV of 187

(2) This

(General Rules of Construction —Sections 10 11)

(2) This section applies also to all Acts of the Governor General in Council and Regulations made on or after the fourteenth day of January, 1887

This section is taken from s 7 (1) and (2) of the General Clauses Act 1887 (I of 1887) with a modification of language suggested by s 11 of Madras Act I of 1891, (local General Clauses Act) It is a recognized principle that persons who are prevented from doing anything in Court on a particular day not by any act of their own but by the Court itself are entitled to do it at the first subsequent opportunity—*Samba na v Ramasami* (1898), I L R 22 Mad 179 An act of a Court ought not to prejudice anybody

2 In the Statement of Objects and Reasons to the Act of 1887 it is remarked that "section 7 is taken from the English Municipal Corporation Act 1882, and is much wanted in this country in the cases to which the Indian Limitation Act, 1877, does not apply "

3 In England and Scotland Greenwich mean time, and in Ireland Dublin mean time, is taken to be referred to in statutes—see the Statutes (Definition of Time) Act, 1880 (43 & 44 Vict, c 9) There is no corresponding provision in India

4 Fractions of a day are generally not taken into account—*Ramapati Chatterjee v Sachinandan Nandi* (1920), 55 I C 650 "Sunset" is not an expression of time within the meaning of the Statute (Definition of Time) Act, 1880—*Gordon v Cann* (1899) L J R Q B D 434 See also *Hirde Narain v Alam Singh* (1918), I L R 41 All 47, *Sherida Daulatram v Narayan* (1911), I L R 36 Bom 268, *Hana v Vatu* (1910), I L R 35 Bom 33

5 The reference to the Indian Limitation Act 1877 must now, of course under section 9 be read as a reference to the Act of 1908

11. In the measurement of any distance, for the purposes of any Act of the Governor General in Council or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane

Measurement
of distances

This section is taken from s 34 of the Interpretation Act 1889 (52 & 53 Vict c 63)

*(General Rules of Construction—Sections
11-15)*

2 The practical effect of the provision is that distance is, *prima facie*, to be calculated "as the crow flies," and not by the nearest road or other practicable means of access. A similar rule has been applied in England to the construction of non-statutory documents—*Lake v. Butler* (1854), 5 E. & B. 92 at p. 99. Where it is intended that distances should be measured, e.g. by road, this should be expressly stated—cf. s. 74 of the Elementary Education Act 1870 (33 & 34 Vict., c. 75).

Duty to be
taken *pro*
rata in
enactments

12. Where, by any enactment now in force or hereafter to be in force, any duty of customs or excise, or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise then a like duty is leviable according to the same rate on any greater or less quantity.

This section reproduces s. 4 of the General Clauses Act 1868 (I of 1868) except that the word "enactment" is substituted for the word "Act". See "enactment" defined by s. 3 (17) *ante*, p. 16.

2 For the construction put in England upon the phrase "a penny per ton per mile," see *Pryce v. Monmouthshire Canal, etc.* (1879), 4 A. C. 216.

Gender and
number

13. In all Acts of the Governor General in Council and Regulations, unless there is anything repugnant in the subject or context,—

(1) words importing the masculine gender shall be taken to include females, and

(2) words in the singular shall include the plural, and *vice versa*.

This section is taken from s. 2 (1) and (2) of the General Clauses Act 1868 (I of 1868) but it has been extended to all Acts and Regulations and does not apply merely to those passed after 1868.

2 For a discussion of the scope of sub-section (1) see *Charlton v. Fings* (1865) 1 R. & F. 374 where it was held that the word "man" in the Representation of the People Act, 1867 did not include "woman"—*Vain v. St. Andrews University* [1909], A. C. 147; *Beresford-Hope v. Lady Sudhurst* (1889) 23 Q. B. D. 79.

(General Rules of Construction —Section 13A)

¹[13A. In all Acts of the Governor General in Council and Regulations, references to the Sovereign or to the Crown shall, unless a different intention appears, be construed as references to the Sovereign for the time being] References to the Sovereign

This section has been taken from s 30 of the Interpretation Act (52 & 53 Vict s 63). It is now well established that a legislature is not determined by the demise of the Crown.

2 Although the Crown exercises its power in different capacities or for different purposes in accordance with the common law or the statute law there is no binding on the Crown—*Williams v Howarth* [1905] A C 551, *Dominion of Canada v Province of Ontario* [1910], A C 637. By s 1 of the Government of India Act India is to be governed by and in the name of the Crown.

3 The older authorities are ably treated in Chitty's *Prerogative of the Crown*. See also Stephen's *Commentaries*, 18th Ed, Vol I, Part I, Chap V (Royal Prerogatives). The more important rules are (1) that the Crown is not bound by a statute unless expressly or by implication named therein, (2) that, apart from an express enactment binding the Crown, time does not run against it and therefore the right cannot be lost by mere non use, (3) that servants of the Crown hold office during pleasure and therefore have no remedy for wrongful dismissal. Crown law has been but little discussed in Indian Courts but when the point has been raised the privilege of the Crown have been upheld.

4 The question of the power of the legislature to make enactments affecting the prerogatives of the Crown came recently before the House of Lords in 1920 in *De Keyser's Royal Hotel case—Attorney Gen v De Keyser's Royal Hotel Ltd* [1920] A C 508. It was held that the legislature by appropriate enactment can affect the prerogatives of the Crown. It is on this principle that the provisions of the Government of India Act are based which provide that any enactment will not be invalid by reason only of the fact that it affects the prerogative of the Crown—s 84 of the Government of India Act. It has been held that the prerogative is not merged in the enactment but that it is curtailed to that extent (see *De Keyser's case* referred to above). It is, however,

(General Rules of Construction—Section 13A)

however, a universal rule that a prerogative and the advantage it affords cannot be taken away except with the consent of the Crown embodied in the statute. This rule of interpretation is well established and applies not only to statutes passed by the British Parliament but also to Acts of Indian legislatures framed with constant reference to the rules recognized in England—*Ganpat Putaya v Collector of Kanara* (1875), 1 L R 1 Bom 7 at p 9 per West J (a case relating to the priority of the Crown over attachment)

5 The following are a few of the prerogative rights of the Crown—

- (i) The right of the King to provide for the administration of newly acquired territories or scattered areas. Ordinances made by the King in Council under powers conferred by Act of Parliament (such as the Foreign Jurisdiction Act 1890) stand upon a footing of legislation delegated by Parliament and have the force of law by virtue of the Act of Parliament and not of the prerogative—*Sobhu a v Miller* [1926] 1 C 518 *Rex v Earl of Crewe* (1910) 2 K B 376
- (ii) The Crown has the prerogative power of declaring war making peace annexing and ceding territory, and concluding treaties. These Acts cannot be questioned in municipal courts—*The Secretary of State in Council of India v Ramachari Boye Salahi the Tanjore case* 13 Moore P C 22, *Sirdar Bhagwan Singh v Secretary of State for India in Council*, 1 L R 2 I A 38
- (iii) The Crown is the executive head of every department and every servant of the Crown holds his office at His Majesty's pleasure and therefore can be dismissed without notice in spite of any contract to the contrary, unless such power is limited by any enactment—see the notes to s 16 of the Act p 56. The Sovereign is regarded as *paterfamilias* and as such, is concerned with the welfare of infants and the helpless and the administration of charities—Halsbury's *Laws of England*
- (iv) Generally the Crown has priority for debts due to it—*The Secretary of State v British India Sug Co* (1888) 5 Bom H C R (O C I) 23 *Rajko Prasad v Mera Tal* (1912) 1 L R 14 All 223 (P C) *Pichu Vallabhai v Secretary*

{General Rules of Construction —Section 13A }

v Secretary of State (1916), I L R 40 Mad 767 But it cannot have priority over secured creditors who in insolvency proceedings have not to prove their debts—*Bank of Upper India v Administrator General of Bengal* (1917), I L R 45 Cal 653

- (1) Exemption from statutes See notes at p 77
- (1i) Crown Grants The Crown, by its grant, has power to create an estate which is unknown to any personal law—*Sheo Singh v Raghubans Kunwar* (1900), I L R 27 All 634, (P C) A Crown grant has to be construed strictly against the grantee—*Iaman Janardhan v Collector of Thana* (1869), 6 Bom H C R (A C J) 191 The law regarding the construction of Crown grants is now summarized in the Crown Grants Act (XV of 1895) which has retrospective effect I L R 27 All 634
- (1ii) The general prerogative right to exclude aliens from British territory—*Musgrove v Chun Tceong Toy* [1891] A C 272 at p 282, where it was held that an alien had no legal enforceable right by action to enter British territory The Foreigners Act (III of 1864) gives power to Government to expel foreigners and the definition "foreigner" includes the subject of an Indian State—*Emperor v Jagadeo* (1920) I L R 49 Bom 804, *Alter Kaufman v Govt of Bombay* (1894), I L R 18 Bom 636
- (1iii) By its prerogative right the Crown has power to proclaim martial law suspending the ordinary law of the country This power can be exercised not only during the time of a war, but also during any emergency such as a rebellion or a grave disturbance—*Mortyn v Fabrigas* (1774), 1 Cowp 161, *Ex parte Marais* [1902] A C 109, *Bugga v King Emperor* (1920), I L R 1 Lah 326 P C, *Kali Nath Roy v King Emperor* (1920) I L R 2 Lah 34 P C But the proclamation of martial law within any area does not affect the operation of the ordinary law outside such area and a person charged with an offence committed within the martial area can be arrested outside the area under the

(General Rules of Construction—Section 13A.
Powers and Functionaries—Section 14)

Code of Criminal Procedure. Even in the area where martial law has been proclaimed, the ordinary law will not be affected unless it has expressly or by necessary implication been so provided.—In re *Kochunni Elaya Nair* (1921), I L R 45 Mad 14

- (12) *Escheat* This prerogative is well established, but the burden lies on the Crown to prove that there are no other heirs.—*Collector of Masulipatam v Cavalry Venkata* (1860), 8 M I A 500

6 A person aggrieved by the action of the Crown in India has no remedy by Petition of Right. His only remedy is by a suit against the Secretary of State for India in Council, and such a suit is not maintainable when the act complained of is done by the Crown in its Sovereign capacity.—*Clode's Petition of Right*, pp 42-44. See also *Irith v The Queen* (1872), I L R 7, Ex 36; *Robin Chunder Dey v Secretary of State* (1870) I L R 1 Cal 11, *Secretary of State v Lockraft* (1914) I L R 39 Mad 311 and also *Robertson's Civil Proceedings*, pp 24-30 where all the cases on the point are collected.

7 As to the King's title as Emperor of India see the Royal Titles Act, 1876 (39 Vict., c 10) and the Proclamation issued thereunder on the 1st January 1877 (*Gazette of India*, 1877, p 16)

8 For a compendium of the law relating to the royal prerogative, see Halsbury's *Laws of England*, Vol VI

Powers and Functionaries

14. (1) Where, by any Act of the Governor General in Council or Regulation made after the commencement of this Act, any power is conferred * * *, then [unless a different intention appears] that power may be exercised from time to time as occasion requires

(2) This section applies also to all Acts of the Governor General in Council and Regulations made on or after the fourteenth day of January, 1887

This

'The words 'on the Government' were omitted by the Repealing and Amending Act 1919 (XVIII of 1919)

'These words were inserted 1911

(Powers and Functionaries — Sections 14 16)

This section reproduces the provision of s 5 of the General Clauses Act, 1887 (I of 1887). See "Government" defined by s 3 (21), *ante*, p 19

2 In the Statement of Objects and Reasons to the Act of 1887 it was said — 'The English rule that a power given to the Crown by statute having been once exercised is exhausted and cannot be exercised again, has been applied by Indian Courts to powers conferred by the Indian legislature on the Governor General in Council and Local Governments. Section 5 of the Bill is intended to remove the inconvenience resulting from the application of that rule

3 The section until amended by Act XVIII of 1919 referred in terms to powers conferred on the Government, whereas s 32 (1) of the Interpretation Act, 1889 (52 & 53 Vict, c 63), refers to statutory powers generally. In the absence of any express or general provision such as this section now contains, it will probably depend on the nature of a power whether it can be exercised from time to time as can judicial powers or is exhausted by a single exercise. See *Craies on Statute Law*, 3rd Ed pp 241 242

4 The section does not apply to a power conferred by a rule made under an Act, and it is doubtful whether it can be applied by analogy

15. Where, by any Act of the Governor General in Council or Regulation, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office

Power to appoint to include power to appoint or

This section is probably declaratory, but, as it was the constant practice to insert this provision in Indian Acts *ex majore cautela* (see, e g, s 39 of the Code of Criminal Procedure, 1892), it was clearly convenient to generalize it

2 For the construction put in England on the word "expressly" in a statute, see *Charlton v Lings* (1868), L R 4 C P, at p 393, *per* Byles, J

16. Where, by any Act of the Governor General in Council or Regulation, a power to make any appointment is conferred, then unless a different intention appears, the authority having

Power to appoint to include power to appoint or

[f

(Powers and Functionaries — Sections 16-17)

¹ [for the time being] power to make the appointment shall also have power to suspend or dismiss any person appointed [whether by itself or any other authority] in exercise of that power

The Statement of Objects and Reasons to the Bill says —“ A power to appoint should ordinarily include a power to remove the person appointed. It is, however, not certain that this construction would be universally adopted by the Courts especially in view of the fact that it has been usual in Indian Acts expressly to take both powers. The opportunity has therefore, been sought to establish the rule once for all for the future.” A servant of the Crown holds office during pleasure and his dismissal even without notice does not give a cause of action against the Crown, whatever may have been the terms upon which he was originally appointed—*Dunn v The Queen* (1896) 1 Q B 116, *Jehangir M Cursetji v Secretary of State* (1902), 1 L R 27 Bom 189, *Voss v Secretary of State* (1906), 1 L R 33 Cal 669. If, however, the appointment is made under an Act the provisions of that Act apply—*Stenton v Smith* [1895] A C 229. See also *Dinshaw Javerj v Secretary of State* (1921) 24 Bom I R 210. It is however doubtful whether provisions in Indian Acts relating to the appointment, suspension, and dismissal of public servants are to be construed as applying to the servants of the Crown to

■ The amendment made by Act XVIII of 1928 was designed to meet cases in which powers of appointment have under centralizing or decentralizing legislation been transferred from one authority to another

17. (1) In any Act of the Governor General in Council or Regulation made after the commencement of this Act it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions or that of the officer by whom the functions are commonly executed

(2) This

¹ The words were inserted by s. 2 and Sch. I of the Repealing and Amending Act 1922 (XVIII of 1922)

² These words were substituted for the words 'by it', *ibid*

(Powers and Functionaries — Sections 17-19)

(2) This section applies also to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

This section reproduces the provisions of s 3 (6) of the General Clauses Act, 1868 (I of 1868), which was extended to Regulations as well as to Acts by the General Clauses Act, 1887.

18. (1) In any Act of the Governor General in Council or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations Successors.

(2) This section applies also to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

This section reproduces s 3 (5) of the General Clauses Act, 1868 (I of 1868), which was extended to Regulations by the General Clauses Act 1887.

19. (1) In any Act of the Governor General in Council or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior Official chiefs and subordinates.

(2) This section applies also to all Acts of the Governor General in Council made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

This section reproduces s 3 (4) of the General Clauses Act, 1868, which was extended to Regulations by the General Clauses Act, 1887.

If a duty is imposed on a Collector, then the provisions of the enactment apply automatically to every person lawfully acting for the Collector.

20. Where,

*(Provisions as to Orders, Rules, etc., made under
Enactments—Sections 20 21)*

*Provisions as to Orders, Rules, etc., made under
Enactments*

Construction
of orders etc.
issued under
enactments

20 Where, by any Act of the Governor General in Council or Regulation, a power to issue any ¹[notification] order, scheme, rule, form or bye law is conferred then expressions used in the ¹[notification] order, scheme, rule, form or bye law, if it is made after the commencement of this Act, shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act or Regulation conferring the power

This section is taken from s 31 of the Interpretation Act 1889 (52 & 53 Vict c 63). Compare s 10 of Madras Act I of 1891 (local General Clauses Act). The provision is declaratory but it is convenient to have it expressly enacted

Power to
make to in-
clude power
to add to
amend, vary
or rescind,
orders rules
or bye laws

21. Where by any Act of the Governor General in Council or Regulation a power to ²[issue notifications] orders rules or bye laws is conferred then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to amend vary or rescind any ¹[notifications], orders, rules or bye laws so ²[issued]

This section is no doubt declaratory. It is convenient to have the principle enacted once for all as the common practice before 1897 had been to take the power expressly in each case. Compare s 32 (3) of the Interpretation Act 1889 (52 & 53 Vict, c 63)

2 Many orders are made by notification e.g., orders extending an enactment under s 5 of the Scheduled Districts Act 1874 (XIV of 1874) and the question frequently arose whether these would be covered by this section. The view taken was that the section as it stood before amendment by Act I of 1903 probably referred only to orders of a legislative character. As amended it expressly covers notifications as do similar provisions

12

¹ This word was inserted by the Amending Act 1903 (I of 1903)

² These words were substituted for the word "make", *ibid*

³ This word was substituted for the word "made", *ibid*

(Provisions as to Orders, Rules, etc., made under
Enactments—Sections 21-23)

in local General Clauses Acts S 21 of the Bombay Act has been held to be retrospective—*Bhagchand v. Secretary of State* (1927) I L R 51 Bom 725 (P C)

22. Where by any Act of the Governor General in Council or Regulation which is not to come into force immediately on the passing thereof, a power is conferred to make rules or bye laws, or to issue orders with respect to the application of the Act or Regulation, or with respect to the establishment of any Court or office or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation then that power may be exercised at any time after the passing of the Act or Regulation, but rules bye laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation

Making of rules or bye laws and issuing of orders between passing and commencement of enactment

This section reproduces s 4 of the General Clauses Act, 1887 (I of 1887) Compare s 37 of the Interpretation Act, 1889 (52 & 53 Vict, c 69)

2 Suppose that an Act is passed on the 1st January but is not to come into operation till the 1st June and that power is taken in it to make rules after "previous publication" (see s 23) This section enables the rules to be framed and "previously published" so as to come into operation contemporaneously with the Act

23. Where, by any Act of the Governor General in Council or Regulation, a power to make rules or bye laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely, —

Provisions applicable to making of rules or bye-laws after previous publication

- (1) the authority having power to make the rules or bye laws shall, before making them, publish a draft of the proposed rules or bye laws for the information of persons likely to be affected thereby,
- (2) the publication shall be made in such manner as that authority deems to be sufficient,

(Provisions as to Orders, Rules, etc., made under Enactments—Section 23)

cient, or, if the condition with respect to previous publication so requires, in such manner as the Governor General in Council or the Local Government prescribes,

- (3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration,
- (4) the authority having power to make the rules or bye laws and where the rules or bye laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye laws from any person with respect to the draft before the date so specified,
- (5) the publication in the Gazette of a rule or bye law purporting to have been made in exercise of a power to make rules or bye laws after previous publication shall be conclusive proof that the rule or bye law has been duly made

This section reproduces s. 6 of the General Clauses Act, 1897 (I of 1897). As to publication of the somewhat different procedure authorized by the Rules Publication Act 1893 (55 & 56 Vict., c. 66)

2 It is clear from clause (4) that rules which are to be made "after previous publication" by a Local Government with the previous sanction of the Governor General in Council need not be submitted to the Governor General in Council for approval until they have been previously published

3 It is clear that amendments may be made without further publication in rules once published for criticism. Otherwise the process would be indefinite. But, if an amendment suggested after previous publication affects prejudicially any right or interest or extends the operation

tion

(Provisions as to Orders, Rules, etc., made under
Enactments—Sections 23-24)

tion of the proposed rules, or makes them more stringent, the spirit of this section would seem to require re publication. The decision must, however, depend on the importance of the amendment contemplated. It will be observed that the position is made secure by clause (c) of the section.

4 Where statutory rules have been made under a power requiring previous publication, amendments to the rules must be published previously to their being made.

5 Publication must be made in the manner required by the Act but there is no objection to supplementing it by publication in local newspapers in addition to the publication in the Government Gazette.

24. Where any Act of the Governor General in Council or Regulation is, after the commencement of this Act repealed and re enacted with or without modification, then, unless it is otherwise expressly provided, any ¹[appointment, notification], order, scheme, rule, form or bye-law, ²[made or] issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re enacted, continue in force, and be deemed to have been ¹[made or] issued under the provisions so re enacted unless and until it is superseded by any ¹[appointment, notification], order, scheme, rule, form or bye-law ¹[made or] issued under the provisions so re enacted, ³[and when any Act of the Governor General in Council or Regulation, which, by a notification under section 5 or 5A of the Scheduled Districts Act, 1874 or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from and re extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re enacted in such area or part within the meaning of this section]

Continuation
of orders,
etc., issued
under enact-
ments repeal-
ed and re-
enacted

With this section compare s. 18 of Madras Act I of 1891 (local General Clauses Act). It generalizes a provision

¹ These words were inserted by the Amending Act, 1903 (I of 1903).

² These words were added by the Second Repealing and Amending Act, 1914 (XVII of 1914).

Provisions as to Orders, Rules, etc., made under Enactments —Section 24 Miscellaneous —Section 25)

provision which hitherto has constantly been inserted in Indian Acts see *e g* s 2 of the Foreign Jurisdiction and Extradition Act, 1879 (XXI of 1879)

2 It has been held that notifications and rules issued under the Petroleum Act (XII of 1896) have been kept alive by this section and that the provisions of the new Petroleum Act (VIII of 1899) which under section 1 (3) extend only to such local areas as the Local Government may by notification in the local Official Gazette direct, are in force in any area to which the corresponding provisions of the old Act were extended *Cf Padan Naha v Emperor* (1903), 7 C W N 658 Unregistered agricultural leases for a term not exceeding 5 years reserving a rent less than Rs 50 were exempted by a notification in 1880 Subsequently the Indian Registration Act 1908, was passed Held that the notification was still in force under section 24 in spite of the new Registration Act—*Hazari Singh v Tirbeni Singh* (1914) 12 A L J 792 28 I C 577

Miscellaneous

Recovery of
fines

25 Sections 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule or bye law, unless the Act, Regulation, rule or bye law contains an express provision to the contrary

This provision is taken from s 5 of the General Clauses Act, 1863 (I of 1863), but its operation is slightly larger than that of the repealed enactment because it is not confined to Acts passed after 1863

2 The subject matters dealt with by the incorporated provisions of the Indian Penal Code are—s 63 amount of fine when not expressed, s 64, imprisonment in default of payment, s 65 limit of term of imprisonment s 66 description of imprisonment, s 67, imprisonment when offence punished with fine only, s 68 termination of imprisonment on payment of fine, s 69, payment of proportional part of fine s 70 time for levy of fine and death of offender For a commentary thereon see *Mauve's Criminal Law of India* 4th Ed, pp 28-32

26. Where

(Miscellaneous — Section 26)

26 Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments but shall not be liable to be punished twice for the same offence

Provision as to offences punishable under two or more enactments

This section reproduces the provisions of s 8 of the General Clauses Act 1857 (I of 1857) except that it is no longer confined to Acts passed after 1897. But this extension is merely declaratory—*Queen v Ramachandra pa* (1883) I L R 6 Mad 249 but see *Clandi Per d'ed v Abdur Rahim an* (1894) I L R 22 Cal 131 Cf s 33 of the Interpretation Act 1889 (52 & 53 Vict, c 63). Thus a railway servant punishable under s 101 of the Indian Railways Act 1890, may be proceeded against under the general provisions of s 129 instead, if the latter section suits better the maxim *generalibus specialia derogant* notwithstanding for a special provision does not render a general provision inapplicable unless the two are inconsistent. When a special enactment deals with an offence similar to the offence which is dealt with by a general enactment it does not follow that the provisions of the general enactment of the Indian Penal Code are repealed to that extent. The conviction in such a case may be under either but not both of those enactments as provided by s 26 *Paryag Rai v Arjun Mian* (1894) I L R 22 Cal 139, *Segu Baliah v A Rama samiah*, 42 I C 608. Where one Act constitutes two offences a separate punishment for each offence can be the same
Pat L J 433
(1917), 3

Pat L J 433

2 The word " offence " is defined by s 3 (37), ante, p 27

3 The provisions of the section appear to qualify s 2 of the Indian Penal Code (XLV of 1860), which provides that " every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof ", but it is to be noted that s 5 of the Code, which contains a saving for " any special or local law " and certain specified enactments, is in the nature of a proviso to s 2

4 It will be observed that the section provides for the punishment of an act which is an offence (1) under the Indian

(Miscellaneous —Sections 26-28)

Indian Penal Code and also under some special or local law, or (2) under two or more special or local enactments

Meaning of
service by
post

27. Where any Act of the Governor General in Council or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post

This section is taken from s 26 of the Interpretation Act 1889 (52 & 53 Vict c 63) with the exception that "registered post" has been substituted for "post"

Citation of
enactments

28. (1) In any Act of the Governor General in Council or Regulation, and in any rule, bye law, instrument or document, made under, or with reference to, any such Act or Regulation, any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and year thereof, and any provision in an enactment may be cited by reference to the section or sub section of the enactment in which the provision is contained

(2) In this Act and in any Act of the Governor General in Council or Regulation made after the commencement of this Act, a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation

This section is taken from s 35 of the Interpretation Act 1889 (52 & 53 Vict, c 63)

2 As an example the Indian Penal Code may for legal purposes, be referred to either by that name or as Act XLV of 1860

(Miscellaneous — Sections 28 29)

3 The convenient practice of giving short titles to Acts of Parliament was introduced in the middle of the last century. At first they were used only occasionally, but now the English practice is to give a short title to every Act and by the Short Titles Act 1896 (59 & 60 Vict. c. 14) short titles have been conferred on the Acts which did not before possess them. For example the 11 & 4 Will. 4 c. 83 may now be cited as The Government of India Act 1833. Collective titles are also given to various series of Acts relating to the same subject matter, thus the nineteen Acts relating to the Bank of England may now be cited collectively as "The Bank of England Acts 1694 to 1892." For Acts conferring short titles on enactments of the legislature in India see the Repealing and Amending Act, 1897 (V of 1897), s. 4 and Schedule III the Indian Short Titles Act 1897 (XIV of 1897) and the Burma Laws Act 1898 (XIII of 1898), s. 17 and Schedule IV. It may be noted that short titles were conferred on a number of Regulations made under the Government of India Act, 1870 (33 Vict., c. 3) by means of an executive order—see Legislative Department's Notification No. 13 dated the 11th October, 1875, *Gazette of India*, 1875 Pt. I, p. 529.

4 In the later volumes of the 1st edition of the *Statutes Revised*, the short titles conferred by the Short Titles Act, 1896, have been actually substituted in the text for the longer titles there given.

5 Sub section (2) will for the future avoid the necessity of expressly inserting this provision, as was done, for example, in the headings to the schedules to the Repealing and Amending Act, 1891 (XII of 1891).

29 The provisions of this Act respecting the construction of Acts Regulations rules or bye laws made after the commencement of this Act shall not affect the construction of any Act, Regulation rule or bye law made before the commencement of this Act although the Act Regulation rule or bye law is continued or amended by an Act Regulation, rule or bye law made after the commencement of this Act.

Having for previous enactments rules and bye laws

This section is taken from s. 40 of the Interpretation Act 1889 (52 & 53 Vict. c. 63). It merely affirms the general rule that legislation is not to be construed as retrospective in the absence of express provision to that effect.

(Miscellaneous — Sections 30-31)

Application
of Act
to Ordinances

¹[30. In this Act the expression 'Act of the Governor General in Council,' wherever it occurs, except in section 5, and the word 'Act' in clauses (9), (12), (38), (48), and (50) of section 3 and in section 25 shall be deemed to include an Ordinance made and promulgated by the Governor General under section 23 of the Indian Councils Act, 1861] ^{24 & c 67} [or section 72 of the Government of India Act, 1915] ^{5 & c 61}

Application
of Act to
Acts made
by the Governor
General.

²[30A. In this Act the expression 'Act of the Governor General in Council' wherever it occurs [includes an Act of the Indian Legislature and, except in section 5], an act made by the Governor General under section 67B of the Government of India Act]

Construction
of references
to Local Government
of a province

³[31 In any enactment made by any authority in British India before the date on which section 3 of the Government of India Act, 1919, comes into operation and in any rule, order, notification scheme bye law or other document made under or with reference to any such enactment any reference by whatever form of words to an authority authorized by law, at the time the enactment was made, to administer executive Government in any part of British India shall, where a corresponding new authority has been constituted by the Government of India Act, 1919, be construed for all purposes, after the above mentioned date as a reference to such new authority] ^{9 & c 101}

Compare as regards legislative authorities the last paragraph of s 130 of the Government of India Act and see also s 174 (4) of that Act

THE SCHEDULE — [Enactments repealed] — Rep by the Amending Act 1903 (I of 1903)

APPENDIX

¹ This section was added by s 2 and Sch I of the Second Repealing and Amending Act 1914 (XXII of 1914)

² These words were added by s 2 and Sch I of the Repealing and Amending Act 1917 (XXIV of 1917)

³ This section was inserted by s 2 and Sch I of the Repealing and Amending Act 1923 (XI of 1923)

⁴ These words were substituted for the words 'except in section 5 shall be deemed to include' by s 2 and Sch I of the Repealing and Amending Act 1928 (XVIII of 1928)

⁵ This section was inserted by s 2 and Sch I of the Repealing and Amending Act, 1920 (XXVI of 1920)

APPENDIX I

Note on the Indian Statute book

The Statute book of British India is a very complex one. It is composed of ten different classes of enactments, which may be grouped as follows —

English legis- lation	{	I Acts of Parliament
		II Orders in Council (made by His Majesty in Council) and Statutory Rules
		III The old Bengal, Madras, and Bombay Regulations
		IV (a) Acts of the Governor General in Council, now called the Acts of the Indian legislature
Indian legis- lation	{	(b) Acts of the Governor General which are certified under s 67B of the Government of India Act
		(c) Acts of the Governor of a Governor's province which are certified under s 72E of the Government of India Act
		V Regulations under s 71 of the Government of India Act
		VI Ordinances made by the Governor General under s 72 of the Government of India Act
		VII Acts of local legislatures
Derivative legis- lation in India	{	VIII Statutory rules, etc., made in India under the authority of English legislation
		IX Statutory rules, orders, regulations, bye laws and notifications made under the authority of Indian legislation
		X Rules, laws and regulations made by the Governor General or Governor General in Council for non regulation provinces prior to 1861, which were confirmed by s 25 of the Indian Councils Act, 1861

I The Acts of Parliament which apply to India may be divided into three classes—(a) Acts which in terms apply to India, (b) Acts which in terms or by necessary implication apply to the whole of His Majesty's dominions, and (c) Acts which apply only to the Presidency-towns, which for certain limited purposes are regarded as British settlements *

(a) But little comment is required on the Acts which in terms apply to India such as for example, the Government of India Act, 1919 (9 & 10 Geo V, § 101), or the Indian High Courts Act, 1861 (24 & 25 Vict, c 104) now repealed. Their territorial operation is of course confined to British India, but it may be noted that for certain limited purposes Parliament has occasionally legislated for Indian States under the suzerainty of His Majesty—see, for instance, § 1 of the Slave Trade Act, 1876 (39 & 40 Vict, c 46), and § 15 of the Foreign Jurisdiction Act 1890 (53 & 54 Vict c 37) it has also empowered the Indian legislature to legislate for British subjects outside British India—see *post*, p 75

(b) An Act of Parliament, which in terms applies to the whole of His Majesty's dominions necessarily applies to British India as a part of those dominions. For instance the provisions of the Territorial Waters Jurisdiction Act 1878 (41 & 42 Vict, c 73), clearly apply to the territorial waters of British India, but a curious question might arise as to how far they apply to the territorial waters of an Indian State. Then there may be Acts of Parliament which as a question of construction, operate throughout His Majesty's dominions or bind his subjects everywhere. For example, certain of the provisions of the Merchant Shipping Act 1894 (57 & 58 Vict c 60) apply in terms to the whole of His Majesty's dominions while others appear to do so as a matter of construction. So again the provisions of the Offences against the Person Act, 1861 (24 & 25 Vict § 100) §§ 9 and 10 relating to the trial in England of British subjects for murders and manslaughter committed abroad apply to British subjects everywhere. The canon of construction for determining the extra-territorial operation of Acts of Parliament is stated in *Reg v Jameson* (1896), 65 L J M C 218 at p 224. The defendant in that case was prosecuted under the Foreign Enlistment Act, 1870 (33 & 34 Vict, c 90), for preparing in Berchuanaland a military expedition against a friendly State. Lord Russell, in giving the judgment of the Court says —“It may be said

* As to British settlements, see *Anson's Law and Custom of the Constitution* Pt II 3rd Ed, p 61 and *Mayor of Lyons v East India Co* (1836) 1 Moore I A 175

said generally that the area within which a statute is to operate, and the persons against whom it is to operate, are matters of construction upon the statute itself. The object of construction is to arrive at what the legislature meant by the language they have used in the enactment. But there may be suggested some general rule—for instance, if there be nothing which points to a contrary intention, a statute will *prima facie* be taken to apply only to the United Kingdom. Where, as here, it is applicable to His Majesty's dominions, it will be taken to apply to all persons in His Majesty's dominions, including those who owe temporary allegiance—foreigners living in the country during their residence there—and according to its context a statute may be taken to apply to His Majesty's subjects everywhere. Another general canon of construction is this, that, if any construction otherwise be possible, an Act is not to be construed as applying to foreigners in respect of acts done by them outside the dominions of the sovereign power enacting. That is a rule based upon international law, by which the sovereign power is bound to respect the exclusive jurisdiction in its own territory of every other sovereign power, and not to attempt to legislate for any portion of that territory."

(c) In the Presidency-towns and Rangoon a distinction must be drawn between Acts of Parliament passed before, and Acts of Parliament passed after, the grant of the Charter of 1726.

As regards Acts passed after 1726 the position seems clear. They have no application to the Presidency-towns, or to any other part of British India, unless in express terms or by necessary implication they apply or extend to British India or the whole of His Majesty's dominions or apply as a personal law to His Majesty's subjects everywhere. Such Acts, therefore, come within classes (a) and (b) mentioned above. See *Edwards v. Ronald* (1870), 1 Knapp P. C. 259. In order to decide whether any particular British statute binds the people of India, it is necessary in the first place to ascertain whether, by any express enactment, British law has been introduced into the parts of India in question, and then, if it appears that it has been so introduced, it is further necessary to consider, with regard to any particular enactment, whether it would be possible to enforce it among persons who are not Christians but Muhammadans and Hindus, without intolerable injustice and cruelty. For instance, to apply the law against bigamy to a people among whom polygamy is a recognized institution would be monstrous, and accordingly it has not been so applied—See *Adv.*

General

General v Surnomoye Dossee (1863), 9 M I A. 391. See also *Craies on Statute Law*, 3rd Ed, pp 406-407, and the cases there cited

As regards Acts of Parliament passed prior to 1726 the position is very obscure. The effect of the Charter was to introduce English law into the Presidency-towns in an indefinite manner and to an indefinite extent. It is by no means clear whether it was introduced as a territorial law, or as a personal law applying only to European British subjects, but it is clear that only such statutes were imported as, on judicial interpretation, might be held applicable to the circumstances of India. Where any particular statute has come before the courts, they have generally held it to be inapplicable. See Ilbert's *Government of India*, 3rd Ed, p 353, where the authorities are collected and the question is discussed at length. As the result of the authorities and his own investigations, Mr Stokes in his collection, published in 1881, prints 35 statutes as being actually or possibly applicable to the Presidency-towns and to Rangoon, where the Recorder determines cases in which the parties are not Hindus, Muhammadans or Buddhists in accordance with "the law administered by the High Court at Fort William in the exercise of its ordinary original civil jurisdiction." See the Burma Courts Act, 1872 (VII of 1872), s 7. As regards these 35 statutes, it is to be noted that some of them have, since 1881, been repealed or amended in England, and that several more of them have been repealed or appear to be superseded by subsequent Indian legislation.

Finally, it may be noted that certain English statutes subsequent to 1726 have been expressly applied to India by Indian legislation. For example, Act XXIV of 1841 applies "to the territories of the East India Company, as far as applicable to the same," the 11 Geo 4 & 1 Will 4, s 46, and the 11 Geo 4 & 1 Will 4, c 65. But in such case a statute so applied is not in force in India *proprio vigore* by reference to any other foreign law. It owes its validity in India to the Indian, and not to the English, legislature.

Orders in Council, etc.

II Colonies acquired by conquest or cession are subject to the legislative powers of the Crown expressed by Orders in Council—Anson's *Law of the Constitution*, Pt II, p 252), but India is not on the footing of a Crown colony—*Ad v General v Surnomoye Dossee* (1863), 9 M I A 391, and probably the only Orders in Council now in force in India are Orders made under the authority

city of Acts of Parliament See *e g* the Orders in Council confirming the Extradition (India) Act 1895 (IX of 1895) published in the *Gazette of India* 1896 Pt I, p 87 and the Order in Council giving an appeal from Zanzibar to the Bombay High Court Such Orders differ only from other statutory rules in that they are made by His Majesty in Council and not by a subordinate rule making authority

2 Royal Proclamations and Orders in Council made in pursuance of the declaration of war with Germany and her allies applied to British India along with the rest of His Majesty's dominions

3 There are a few rules which were made in England under English statutes but operate in India See *e g* orders issued by the Secretary of State under s 1 of the Government of India Act 1919 (9 & 10 Geo V, c 101) and the English Index to Statutory Rules and Orders tit India See also the non domiciled parties Divorce Rules made under the Colonial Divorce Act

III For a historical resume of legislation in India reference may be made to Sir Courtenay Ilbert's book *Regulations of the Bengal, Madras and Bombay Codes*
A brief Historical Survey of Parliamentary Legislation relating to India published in 1922 The earliest extant Indian legislation consists of what are usually referred to as the Regulations of the Bengal Madras and Bombay Codes

2 The oldest of these Regulations are those of the Bengal Code which were passed from 1793 to 1834 inclusive and numbered in all 675 but are now reduced to only 89 wholly or partly in force Legislative power was first expressly conferred by Parliament upon the Governor General in Council by the East India Company Act 1772 (13 Geo 3 c 63) commonly known as the Regulating Act and by the East India Company Act 1780 (20 Geo 3 c 56) but the terms of those statutes were so narrow and precise that there can be no doubt that the Regulations passed in pursuance of them often exceeded the authority granted However that may be a large number of Regulations were made prior to 1793 and in that year they were collected and passed by Lord Cornwallis in the shape of a Revised Code and the Regulations contained in it date from that year and have been regarded as superseding and repealing all the Regulations passed before that year See the preambles to Regulations VIII IX X etc of 1793 Four years later the East India Act 1797 (37 Geo 3 c 142) gave parliamentary recognition to the full power to legislate which had in the meantime been assumed

3 A legislature having been thus duly constituted in Bengal, it became necessary to establish similar authorities in the other Presidencies. Accordingly, by the Government of India Act, 1800 (39 & 40 Geo 3, c 79), the Governor and Council of Fort St George at Madras were invested, within the territories subject to their Government, with the same legislative power as had previously, by the statute of 1781, been conferred upon the Governor General and Council of Fort William. Again, in 1807 the 47 Geo 3, Sess 2, c 68, was passed for *inter alia* "the better government of the settlements of Fort St George and Bombay." It recited the expediency of granting to the two local Governors in Council the same powers of government as were vested in the Governor General and Council of the Presidency of Fort William, and proceeded to empower them to make, frame and issue such rules and regulations for the good order and civil government of the towns of Madras and Bombay and the Company's settlements and factories there, "and to add the necessary sanctions thereto as the Governor General in Council might make for the good order and civil government of Fort William." The Governor in Council at Bombay was at the same time empowered to frame regulations for the provincial Courts and Councils within his territories and provinces "in like manner and subject to all the regulations, provisions and confirmations touching the same as the Governor General and Council at Fort William were, by any Act then in force, authorised and empowered to do for the better administration of justice among the native inhabitants and others being within the Provinces of Bengal, Bihar and Orissa." As these statutes were later than the statute of 1797, it would seem that they conferred on the local Governors legislative powers, not as defined by the statutes of 1773 and 1781, but as recognized and confirmed by the statute of 1797. In this way 251 Regulations of the Madras, and 259 Regulations of the Bombay Code were passed, but of these only 33 and 20, respectively are now wholly or in part in force. In Bombay a course, similar to that taken by Lord Cornwallis in Bengal in 1793, was adopted in 1827, when a regulation repealing all the 79 Regulations made up to that time was passed and a Revised Code was compiled.

4 By the East India Company Act, 1813 (53 Geo 3, c 155), the legislative powers of the three Councils were extended and subjected to further control. "Thus," writes Cowell in his *History and Constitution of the Courts and Legislative Authorities in India*, 5th Ed., at p 67, "from time to time the legislative powers of the Councils

were

were developed and in pursuance of these powers they enacted Laws and Regulations till 1834. Down to that date which is the important epoch in the history of Indian legislation there were five bodies of statute law in force in the empire. *First* there was the whole body of English statute law existing in 1726 so far as it was applicable which was introduced by the Charter of George I, and which applied at least in the Presidency towns. *Secondly* all English Acts subsequent to that date which are expressly extended to any part of India. *Thirdly*, the Regulations of the Governor General's Council, which commence with the Revised Code of 1793, containing forty eight Regulations all passed on the same day (which embraced the results of twelve years antecedent legislation) and were continued down to the year 1834. They had force only in the territories within the Presidency of Bengal. *Fourthly*, the Regulations of the Madras Council which spread over the period of thirty-two years viz, from 1802 to 1834, and are in force in the Presidency of Fort St George. *Fifthly* the Regulations of the Bombay Code which began with the Revised Code of Mr Mountstuart Elphinstone in 1827, comprising the results of twenty eight years previous legislation, and were also continued till 1834, having force and validity in the Presidency of Fort St David.

5 Many of these Regulations have been extended to other provinces with or without modifications, either by notification under s 5 of the Scheduled Districts Act 1874 (XIV of 1874), or by express enactment.

IV By 1833 the weakness and uncertainty of the system of legislation by Regulations for the three provinces had become apparent (see again, Cowell's *History of the Courts and Legislative Authorities in India*, 6th Ed., p 68 and Ilbert's *Government of India*, 3rd Ed., p 86). The Government of India Act, 1833 (3 & 4 Will 4 c 85) swept away the existing legislative authorities, and placed legislative power in the hands of a single authority namely the Governor General in Council. By the Government of India Act 1853 (16 & 17 Vict. c 95) provision was made for the association of Additional Members with the Council for legislative purposes and by the Indian Councils Act, 1861 (24 & 25 Vict c 67) provision was made for the re-establishment of local legislatures and the constitution of the Governor General's Legislative Council was developed and regulated. It was under this statute, as amended by subsequent statutes that Acts of the Governor General in Council were made till 1915. The proper title of the Legislative Council was "the Governor General in Council".

Acts of the
Governor
General in
Council

cil at meetings for the purpose of making laws and regulations." The laws made by this body were always called "Acts of the Governor General in Council," while the term "Regulation" is confined to Regulations made under the Act of 1870, for which see *post*, pp 78-79

Extent of
powers

2 In 1892 by the Indian Councils Act (55 & 56 Vict, c 14) the size of the Legislative Councils and their functions were enlarged. The regulations under which the non-official members were to be nominated provided for recommendations, which, in practice, were always adopted, and this introduced the elective principle up to the constitution of the Councils. In 1909 by the Indian Councils Act, 1909 (9 Edw VII, c 4), the Councils were further enlarged. But the statutes of 1892 and 1909 did not make any difference in the legislative power of the Councils. In 1915 by the Government of India Act, 1915 (5 & 6 Geo V c 61) all statutes relating to the Government of India were consolidated. That Act was further amended in 1916 by 6 & 7 Geo V, c 37, and in 1919 by 9 & 10 Geo V, c 101. Under the latter Acts the Indian Legislature consists of two Chambers—(1)

Assembly to be
Legislature
unless it has been agreed to by both Chambers, either without amendment or with agreed amendments (see s 63). A law can be enacted without the assent of either Chamber of the legislature—(a) when the Governor General certifies the passage of the Bill under s 67B, (b) by a regulation under s 71, or (c) by an ordinance under s 72.

The powers of the Indian legislature are both territorial and extra-territorial—see Ilbert's *Government of India* 3rd Ed pp 407-422. Its territorial powers may be summarized as follows—

The Indian legislature has power to make laws for all persons, for all courts and for all places or things, within British India [s 65 (1) (a) of 9 & 10 Geo V, c 101] *Empress v Burah* (1878), L R 5 I A 178, and I L R 4 Cal 172, *Queen v Bura Hangseh* (1878), 3 Cal L R 197, and *Alter Kaufman v Government of Bombay* (1894) I L R 18 Bom 367, and L R 1 Bom 367, and L R

the Indian Evidence Act, 1872, was held to be inoperative. It may be noted that there is a presumption that the laws and regulations of the Governor General in Council are known to Parliament—see *Abdulla v Mohan Gir* (1859), I L R 11 All 490.

As to legislation for territorial waters, see the Transport of Salt Act, 1879 (XVI of 1879), and the Obstruction in Fairways Act, 1881 (XVI of 1881), also the proceedings in Council, *Gazette of India*, 1879, Suppl., p. 1224, and *Gazette of India*, 1881, Suppl., p. 19, and *ante*, p. 11.

Its extra-territorial powers may be summarized as follows —

The Indian legislature may make laws —

- (i) for all subjects of His Majesty and servants of the Crown within all parts of India outside British India
- (ii) for the government of officers, soldiers, airmen and followers in His Majesty's Indian forces wherever they are serving in so far as they are not subject to the Army Act or the Air Force Act,
- (iii) for all persons employed or serving in any naval forces raised by the Governor General in Council wherever they are serving, in so far as they are not subject to the Naval Discipline Act,
- (iv) for all native Indian subjects of His Majesty without and beyond as well as within British India

(See s. 65 of the Government of India Act)

There are also various Acts of Parliament enabling the legislatures of British possessions to deal with special subjects which may involve extra-territorial legislation, see, for example, the Admiralty Offences (Colonial) Act, 1860 (23 & 24 Vict., c. 122), s. 1, the Naturalization Act, 1870 (33 & 34 Vict., c. 14), s. 16, the Extradition Act, 1870 (33 & 34 Vict., c. 52) ss. 18 and 23, the Slave Trade Act, 1876 (39 & 40 Vict., c. 46), s. 2, the Fugitive Offenders Act, 1881 (44 & 45 Vict., c. 69), s. 32, the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict., c. 27), the Colonial Probates Act, 1892 (55 Vict., c. 6), s. 1, and the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), ss. 735 and 736.

3 Under the proviso to s. 65 of the Government of India Act, the Indian legislature has not, unless expressly so authorized by Act of Parliament, power to make any law repealing or affecting—

- (i) any Act of Parliament passed after 1860 and extending to British India, including the Army Act and Air Force Act,
- (ii) any Act of Parliament enabling the Secretary of State in Council to raise money in the United

Kingdom

Kingdom for the government of India; and has no power to repeal or alter any rules made under the Government of India Act [s 129A (1)]

Under sub section (3) of s 131 express power has been given to the Indian legislature to alter certain provisions of that Act which are enumerated in the Fifth Schedule thereto

Before the Government of India Act, 1915, there was a considerable conflict of opinion regarding the powers of the Indian legislature to affect the jurisdiction of High Courts. Reference to the following cases will be useful—

Collector of Thanav v Bhaskar (1884), 1 L R 8 Bom 264, *Feda Hossein in re* (1876) 1 L R 1 Cal 431, *Queen v Burah*, (1878) L R 5 I A. 178, *Currie, in re* (1896), 1 L R 21 Bom 405, *Sheonandan v King Emperor* (1918), 3 Pat L J 581

This was made clear by s 131 (3) and Sch V of the Government of India Act which enables the Indian legislature to amend s 106 regarding the jurisdiction, powers and authority of High Courts

Further, the Indian legislature has no power to pass any law affecting the authority of Parliament or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Northern Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom or affecting the sovereignty and dominion of the Crown over any part of British India [Government of India Act s 65 (2)] For the meaning of the words 'unwritten law or constitution whereon may depend', etc, see *Ameer Khan's case*, 6 Ben L R at pp 477-482. It may be noted that any Act giving power to any Court other than a High Court to sentence European British subjects to death requires the previous sanction of the Secretary of State in Council [s 65 (3) of the Government of India Act]

Under s 67 of the Government of India Act, the Indian legislature cannot, without the sanction of the Governor General, enact any Act affecting—

- (a) the public debt or revenues,
- (b) the religious rites and usages,
- (c) the discipline or maintenance of the military, or air forces,
- (d) naval relations of the Government with foreign princes or states,

(e) provincial

- (e) provincial subjects as defined in s 45 (4), unless they are expressly made subject to legislation by the Indian legislature

or any Act repealing or amending—

- (f) any Act of a local legislature

- (g) any Act or Ordinance of the Governor General

4 It is a well established rule in England, that the Crown is not bound by a statute unless it is expressly or by necessary implication named therein, on the ground that the legislature make laws for subjects and not for the sovereign. The same rule has been adopted in the United States. In one case it was sought to make Chelsea Bridge liable for poor rates but as the statutes imposing poor rates did not name the Crown and as the bridge was built by the Commissioners of Works out of public money it was held that the bridge was not ratable—*Reg v McCann* (1868) L R 3 Q B 141 677

As India is now governed by and in the name of His Majesty (s 1 of the Government of India Act) and as the powers of the Indian legislature are wholly derived from Parliament it seems clear that an Indian Act cannot bind the Crown or the executive of the Crown unless Parliament has in terms bestowed on it power to do so. The only provision in point appears to be s 84 (1) (2) of the Government of India Act which provides that no Act of the Indian or a local legislature shall be deemed invalid by reason only that it affects the prerogative of the Crown. This provision probably authorises the legislature in India to bind the executive of the Crown (that is the Government) by its Acts. The English rule that a statute does not bind the Crown unless it is named in it expressly or by necessary implication has been held applicable in India in some cases. See *Government of Bombay v Esufali* (1909) I L R 34 Bom 618 at p 629. In *Bell v Municipal Commissioners for the City of Madras* (1901) I L R 25 Mad 457 Bhargya Aiyangar J was of

exempted
ing on him
has been

followed in the majority of decisions—*Secretary of State v Matlurabai* (1889) I L R 14 Bom 213. *Secretary of State v Bombay Laiding Co* (1893) 5 Bom H C R (O C J) 23. A distinction however may be drawn between acts done by the Government in India in exercise of what are called sovereign powers and acts done in the conduct of undertakings which might be carried on by private individuals without having sovereign

powers

powers delegated to them—see *Nobin Chunder Dey v. Secretary of State for India* (1870), I L R 1 Cal 11, and *P & O Co v Secretary of State for India*, there cited, also *Secretary of State for India v Hari Bhanji* (1882), I L R 5 Mad 273, *Ross v Secretary of State* (1913), I L R 37 Mad 55, and 39 Mad 781, *Secretary of State v Cocraft* (1914), I L R 39 Mad 351, *Rameshwar Singh v Secretary of State* (1911), I L R 39 Cal 1 (P C), and s 65 of the Government of India Act, 1858 (21 & 22 Vict, n 106)

For legislative procedure see the *Rules of Legislative Business* made under ss 67 and 80 (3) of the Government of India Act

Regulations
under 33
Vict, c 3

V In 1870, an additional power of legislation was bestowed by parliament on the Indian Government By the Government of India Act, 1870 (33 Vict, c 3), ss 1 and 2, which correspond to s 71 of the Government of India Act the Governor General in (Executive) Council is authorized to make Regulations for the peace and good government of certain territories in British India The object of this statute was to provide a more summary and elastic procedure for making laws for the more backward parts of British India The section empowers the Local Government to propose to the Governor General in Council drafts of Regulations for any territory to which the Secretary of State has declared that section applicable The Governor General in Council is then directed to take the draft into consideration If the policy of the measure is approved the form of the draft is overhauled by the Legislative Department and retained if necessary to the Local Government for re submission When the draft Regulation so proposed, has been approved by the Governor General in Council* and has received the Governor General's assent it is published in the *Gazette of India* and the local official Gazette, and "shall thereupon have the like force of law and be subject to the like disallowance as if it were an Act of the Indian legislature"

2 The statute of 1870 was the result of a despatch from the Government of India to the Secretary of State, dated 10th January, 1868, which was drafted by Sir H S Maine The despatch points out that, when new and wild territory is annexed, it becomes at once an integral part of British India and British Indian law applies to it But a refined and elaborate system of law is wholly unsuitable to such territory and its population To a greater or less extent the people must be left to follow their own customs,

* Such drafts are regularly brought before a meeting of the Executive Council

customs, and the introduction of English law must be gradual and tentative " A simpler mode of exercising legislative power than that provided by the Indian Councils Act would seem desirable for the purpose of legalizing such experiments, and, in fact, the legislative machinery which we prefer for these wild territories would differ only from the executive machinery now applied by the Punjab Government in its securing a greater degree of caution and deliberation for all measures, that might be adopted towards the chiefs and people " (*Life of Sir Henry Maine* by Grant Duff, p 360, where the despatch is cited at length) See Ilbert's *Government of India*, 3rd Ed p 105

There was considerable divergence of opinion on the question, whether the application of a Regulation is or is not strictly territorial It was generally held that there was no such territorial restriction The British Baluchistan Civil Justice Regulation, 1896 (IX of 1896) therefore, provided that the Chief Court in the Punjab should be the High Court in cases of divorce for British Baluchistan (See also s 15 of the Andaman and Nicobar Islands Regulation, 1874) The Punjab Chief Court questioned the validity of this power To set at rest this divergence of opinion, the provision in subsection 3 (a) was added to s 71 of the Act of 1916 by the Government of India Act, 1916

3 Under the powers conferred by the statute of 1870 a large number of Regulations have been made for the wilder parts of Bengal, Bombay, the North-Western Provinces, the Punjab, and Burma and for Coorg, Ajmere, Assam, the Andaman Islands, British Baluchistan, and Aden

4 It is to be noted that, with the exception of s. 5 (1) and (2) (commencement of Acts), the provisions of the General Clauses Act, 1897 (X of 1897), apply to Regulations There is no difference in form between a Regulation and an Act, except that in the former case the word " Regulation " is used where in the latter case " Act " would be used.

5. The Regulations applicable to the territories under the various Local Governments are collected in the local Codes published by the Legislative Department of the Government of India or the Local Government

6 For the procedure in making Regulations, see Rule 36 of the Rules of Business under s 40 (2) of the Government of India Act. (The rules were originally made under s 8 of the Indian Councils Act, 1861).

VI By s. 72 of the Government of India Act, power *Ordinances* is given to the Governor General to make temporary laws

J) 195, *Collector of Tlana v Bhaskar Mahadeo* (1884),
 I L R ■ Bom 264 *Hari v Secretary of State* (1903)
 I L R 27 Bom 424 Certain of the provisions of Bom
 bay Act III of 1888 and of Bengal Act II of 1888 having
 on this ground been found to be *ultra vires* of the local
 legislatures they were supplemented or validated by Acts
 of the Governor General in Council—see Act VII of
 1888 the Oudh Courts (Supplementary) Act XXXII
 of 1925 the Madras Bengal and Bombay Children
 (Supplementary) Act XXXV of 1925 and the Sind
 Courts (Supplementary) Act XXXIV of 1926

5 The Secretary of State in a despatch dated 1st
 December 1862, ruled that every Bill of a local legisla-
 ture containing penal clauses should be submitted to the
 Governor General for his *previous* sanction and in a
 despatch dated 3rd December 1866 he pointed out that
 when a general Act of the Governor General in Council is
 amended by a local legislature it is inconvenient to in-
 corporate the new provisions which are intended to have
 only a local application in the general Act, and that
 the new provisions would more appropriately be framed
 as a separate Act of the local legislature to take effect
 with the sanction of the Governor General and notwith-
 standing anything contained in the general Act

6 It is to be noted that an Act of a local legislature
 does not have any validity until the Governor General
 shall have assented thereto and such assent shall have
 been signified by him to and published by the Gover-
 nor or Lieutenant Governor as the case may be See
 s 81 (3) of the Government of India Act

Statutory
 Rules etc
 made under
 English Acts

VIII In modern times the practice has sprung up of
 delegating certain powers of legislation to public authori-
 ties and local bodies The Act of Parliament deals with
 the main principles of the measure and then leaves the
 subordinate details to be dealt with by the more flexible
 machinery of rules orders regulations or bye laws as
 they are variously called Power is sometimes given to
 authorities in India to make rules to carry into effect
 the provisions of English Acts For example the
 Governor General in Council has wide rule making
 powers under the Government of India Act which are
 however usually subject to the sanction of the Secretary
 of State in Council

When legislative powers are thus delegated to subordi-
 nate authorities the powers must of course be exercised
 in accordance with the authority given and it is a que-
 tion for the Courts to determine whether the authority
 has or has not been exceeded It is a clear rule that no
 Court can question the validity of an Act of Parliament

but

but the numerous decisions on the exercise of delegated powers of legislation have established certain rules of construction in relation to them. The amount of deference paid by the Courts to this class of legislation depends on the character of the authority of the delegated law-giver, and the intention expressed by or to be implied from the language of the legislature as to the extent of authority or respect to be attached to the instrument in question. The Courts exercise a keen supervision over municipal bye laws or bye laws made by trading corporations such as railways under their private Acts, but they are very loth to interfere with rules made by the judges or administrative departments of the State. Thus, where a rule made by the Lord Chancellor with the concurrence of the Board of Trade under the Bankruptcy Act 1853 (46 & 47 Vict., c 52) took away the right of appeal to the High Court in cases under £50, both the High Court and the Court of Appeal upheld the validity of the rule, and Lord Escher in his judgment says—'Whenever the objection is taken that a general rule made by such a great judicial officer, with the concurrence of a great officer of State, is *ultra vires*, it will be necessary for the Court, if it has to decide the point to look at the rule with extreme care, and we should be strongly inclined to the view that such high functionaries had not exceeded their authority, though, of course if we thought they had, we should be bound to say so. —*I r parte Forman* (1887), 18 Q B D 393. *Cf Re Stainton* (1887), 19 Q B D 162. But it has been held by the House of Lords that where an Act expressly declares that any rules made under it "*shall have the same effect as if enacted by this Act*" the Courts are debarred from calling the rules in question, for they cannot question the powers of the legislature itself.—*Institute of Patent Agents v Lockwood* [1894], A C 347.

IX The practice of leaving subordinate details of Statutory Rules, &c., made under Indian legislation legislation to be worked out by rules or orders has been widely adopted in India. Apparently the first Act which gave this delegated power was Act XI of 1850, s 3. Now nearly every Act contains a rule-making power and the statutory rules, orders, regulations, bye-laws and notifications collected together almost equal in volume the Acts themselves. The scope and extent of the authority of these rules depends of course upon the terms of the enactments empowering them to be made which vary greatly but in judging of their validity, Indian Courts would probably be guided by the same considerations that the English Courts have applied to rules and bye-laws.

bye-laws made under English statutes. It is to be noted that ss 20 to 24 of the General Clauses Act, 1897 (X of 1897), apply to this class of enactment. In certain enactments rules made do not come into force till they are approved by the legislature—*vide* s 8 of the Cotton Transport Act, 1923—or certain enactments require that they should be placed before the local legislature. Certain local legislatures have enacted that rules made under certain Acts are liable to be rescinded or modified by the legislature—See Bombay Act XVIII of 1925, s 221. This practice, however, is avoided as far as possible.

Executive orders made for non regulation provinces prior to 1861

X. The territories under the government of the East India Company were divided into Regulation and non-regulation provinces. The territories outside the Bengal, Madras and Bombay Presidencies were known as non-regulation provinces because the Regulations made for the old Presidencies did not apply to them. It was assumed that they were on the same footing as Crown colonies, and that they were to be governed by the executive power. Orders and Regulations were made for them either by the Governor General or by the Governor General in Executive Council. Doubts having arisen as to the validity of these orders and regulations, s 25 of the Indian Councils Act, 1861 (24 & 25 Vict c 67), provided that they should not "be deemed invalid only by reason" that they had not been made in accordance with the statutory requirements of ordinary Indian legislation. That enactment has been construed as impliedly prohibiting such legislation for the future. These orders and regulations have never been collected and probably most, or nearly all, of them which have not been expressly annulled are now obsolete. In 1870 Sir FitzJames Stephen, after referring to the 'extraordinary indistinctness' of this body of legislation, proceeded to give the following illustration—"It was ordered on the conquest of some of the provinces—the Punjab for instance—that the *spirit* of the Bengal Regulations should be applied to them, and various orders have been issued at different times, and with respect to different provinces, extending the provisions of particular Regulations and Acts in a more or less indefinite manner to those provinces. The Circular Orders too, which have the force of law, were in many instances, not drawn up by lawyers or with any reference to legal principles, but were intended to meet the exigencies of that state of discretionary government which is now passing, if it has not passed away. When such orders come before Courts of law, and are interpreted strictly, the results are often lamentable." As to express repeal, see, *e g*, Schedule I to the Punjab Laws Act, 1872 (IV of 1872).

The

The origin and scope of the various classes of enactment which, in combination, may be said to form the *lex scripta* of India, having been traced, it may be useful to note how far that body of statutory enactments has been collected in any form which is accessible to the public who are governed by it. Sir FitzJames Stephen, in a minute of the 10th February, 1870, after commenting on the defects which are common to all Statute-books, observes that 'the Indian Statute book has one which is peculiar to itself. If it were not a contradiction to say so, I should describe this fault as consisting in the fact that it does not exist. I mean by this that the written law of India is nowhere collected into one body but is to be found in a greater number of repositories than the written law of almost any other country.' Since 1870 much has been done, and the Indian statute-book is now hardly open to that reproach.

Publication
of Statute
law. 2

(1) The Acts of Parliament concerning India up to the year 1881 were first collected and published in Whitley Stokes' *Collection of Statutes relating to India*. This compilation is now maintained and brought up to date from time to time by the Legislative Department of the Government of India.

(2) The Orders in Council relating to India have not been collected, but references to them may be found under the heading "India" in the *Index to Statutory Rules and Orders* published by the Statute Law Committee in England, and also in Part I of the *List of General Statutory Rules and Orders*, a new edition of which has lately been published by the Legislative Department.

(3) The Acts of the Governor General in Council from 1834 onwards are published in annual volumes, and a revised edition of the unrepealed general Acts from 1834 to 1927 has just been published by the Legislative Department.

(4) Local Codes used to be published by the Legislative Department for the provinces under the Indian Government but the preparation of these Codes in provinces which have local legislatures now devolves on the Local Governments. These Codes contain (a) the old Regulations so far as they are in force in the province in question, (b) local Acts of the Governor General in Council and Indian legislature, (c) Regulations under 33 Vict., c. 3 and s. 71 of the Government of India Act applying to the province in question, and (d) Acts of the local legislature, if any. The dates of the latest editions of these local Codes are Madras (1915), Punjab (1929), Burma (1924), Bengal (1913-1915), Baluchistan (1914),

Central Provinces

Central Provinces (1924) United Provinces (1922), Ajmere (1916) Coorg (1908) Bombay (1923), Assam (1915)

(5) The collections of Statutory Rules and Orders for the General Statutes have been published by the Government of India while the Local Governments have also published their collections so far as they relate to their provinces

(6) The Chronological Table of enactments relating to India was last published in 1917 but a new edition of this volume is now in the press and will shortly be published. The Index to the Indian Statutes is in course of preparation by the Legislative Department

Legislation
for State ter-
ritory

Side by side with the British Indian Statute book there exists a large body of laws for State territory closely following British Indian legislation but owing its authority to a wholly different source. The Governor General in Council, under powers conferred by the Indian (Foreign Jurisdiction) Order in Council 1902 makes laws for Assigned Districts British cantonments Residency bazars railway lands and other ceded jurisdictions in the territories of Indian States. The laws so made do not owe their validity either to the English or to the Indian legislature but derive their authority from the delegated prerogative of the British Crown which is the suzerain and paramount power in India. For instance the provisions of many Indian Acts have been *applied* to the Civil and Military Station of Bangalore which is in the Mysore State. But those Acts are not in force in Bangalore as Acts of the Indian legislature. It would have been equally competent to the Governor General in Council to have applied the corresponding provisions of the French or German Codes. The laws so made by the executive of the Crown may be compared to the ordinances made by the Governors of Crown Colonies and they may also be compared to the Orders made by His Majesty in Council for establishing consular courts in Eastern States or for regulating African Protectorates. But neither parallel is quite exact for there is nothing elsewhere which exactly corresponds with the divided sovereignty which exists in Indian States. See Ilbert's *Government of India* Chap V.

The laws and the rules and orders made under them have been collected in Macpherson's *Lists of British Enactments in force in Indian States* of which a revised edition will be issued shortly

APPENDIX II.

APPENDIX II

Note on Statutory Drafting

The General Clauses Act, 1897, like its predecessors of 1868 and 1887 may be described as a Draftsman's General Clauses Act. Its objects are (1) to shorten the language of statutory enactments (2) to provide as far as possible for uniformity of expression by giving *prima facie* definitions of a series of terms in common use, (3) to state explicitly certain convenient rules of construction, and (4) to guard against slips and oversights by importing by implication into every Act certain common formulae which otherwise ought to be inserted explicitly and which are apt sometimes to be overlooked.

The General Clauses Act does not apply to the Acts of local legislatures. Each local legislature requires its own General Clauses Act but it is evident that the local Acts should conform to the general Act, for otherwise divergent rules of construction would apply and great confusion might result. Section 5 (1) and (2) (the coming into operation of enactments) would not be applicable to the Acts of a local legislature but nearly all the remaining provisions are as appropriate for such Acts as for Acts of the Governor General in Council and have in fact been adopted in the local Acts.

2 Statutory drafting is concerned only with the form of legislation and not with its substance or expediency. Its main object is to express clearly and unequivocally the intentions of the legislature, so that rights and obligations may be certain and that the laws which govern them may be "understood of the people." But, to effect this object it is not sufficient to use language which in a despatch or resolution would properly be described as accurate and precise. The construction of Acts and other statutory enactments is confided to the courts of law. In process of time the courts have evolved a large and elaborate body of rules to guide them in construing statute law. Every enactment must be framed with constant attention to these rules for if it be not so framed it may wholly miss its mark. So too many terms and expressions have a technical meaning in law, which is quite distinct from their popular meaning, for example the word "heir" in English law refers only to the inheritor of real property and the word "ship" has a nautical, a popular, and a legislative meaning (see ante p. 35). Then again the experience of generations of draftsmen has worked out a series of rules which must be observed in order to give uniformity to legislation,

legislation, and which enables those who are concerned with its construction to see at a glance the scheme and scope of any particular piece of legislation. Every Act must so to speak be fitted into a general framework.

Rules of drafting

3 The following notes relating to the drafting of Indian Acts are adapted, by permission, from a memorandum on "Statutory Forms" drawn up by Sir C. Ilbert, Parliamentary Counsel to the Treasury*. English rules of drafting are not applicable to India in their entirety because many of them depend on the relations of the House of Commons to the House of Lords and the Crown, and on the Standing Orders of the two Houses. Thus the special rules relating to consolidation Bills and money Bills in parliament have no application to India. Probably the most convenient course will be to deal first with some preliminary matters and then to take the framework of an Indian Act as the type of legislation and to note consecutively on its component parts.

It will be observed that many of the rules noted below are not hard and fast rules but only general principles to be departed from with caution. The forms too are not to be followed blindly, but their applicability to each case must be considered.

Preliminary work

4 Before beginning to draft a Bill it is essential to master the subject-matter. When a doubtful question of construction arises, the courts are entitled to consider the previous law and practice, the mischief or defects which the Act was intended to remove, and the nature of the remedy provided, and the courts moreover proceed on the assumption that the legislature when legislating, knows the existing state of the law. So before devising a remedy, it is necessary to know the existing law and practice and to have a clear conception of the mischief or defects to be remedied.

The following points should be considered with respect to each proposed enactment: Is legislation necessary or can the matter be conveniently dealt with by executive orders? If legislation is required should it be carried out by the central legislature or by local legislation? Finally, if an Act is resolved on should the Act deal with the whole question, or should details be left to be dealt with by the more flexible machinery of statutory rules?

Arrangement

5 The subject-matter of a Bill should be arranged with reference to administrative convenience. Normal and

* Government Bills in England are drafted by or under the directions of the Parliamentary Counsel to the Treasury. No provision is made for drafting Bills introduced by private members. As regards English drafting see Lord Thring's *Practical Legislation*.

and general provisions should come first; special, exceptional or local provisions should be placed at the end. Thus a Bill applying to the whole of British India should be framed accordingly, and any necessary adaptation to the Presidency-towns should, as a rule, be dealt with in special clauses near the end. So too, it is convenient to put temporary and transitional provisions at the end, because, when they are spent, they can be repealed without making gaps in the fabric of the Act.

It is generally expedient to lay down first the rules of law to be observed, and then to state the authorities by which they are to be administered, and the procedure to be followed in administering them.

6 When a Bill is a long one, it may be made more easily intelligible by dividing it into Parts (see *ante*, p 28), and by grouping clauses under italic headings, as to which see *Queen v Local Government Board* (1882), L R 10 Q B D, at p 321, *Hammersmith, etc Railway Co v Brand* (1869), L R 4 H L, at pp 216-217, and *Union Steamship Company of New Zealand v Melbourne Harbour Trust Commissioners* [1884] 9 A C, at p 369. But excessive sub-division is to be avoided. It has been said that a Bill should not be divided into Parts unless the subjects of the Parts are so distinct that they might appropriately be contained in separate Acts.

7 When a Bill is of any length, a tabular "Arrangement of clauses" as it is called in England, or "Contents" as it is called in India, may be prefixed to the Bill. This is rarely done in Bills drafted by the Government of India, but such tables are prepared and prefixed to Acts when republished in the official editions which are issued for sale to the public. The study of such a table is useful for testing the convenience and logical sequence of the arrangement adopted. It may be noted that the subdivisions of a Bill are called "clauses." When the Bill is passed and becomes an Act, its clauses become sections. In the Bill itself they are always referred to as sections, because the Bill is drafted on the assumption that it will become law, see *ante*, p 35.

8 Each section should have a marginal note, which should be short and distinctive. It should be general, and should describe, but not attempt to summarize, the contents of the section to which it relates. It should usually be in the substantival form. For instance, it should run—"Power of Local Government to make rules," and not "The Local Government may make rules." When a clause is amended in Select Committee, care should

should always be taken to see if any corresponding alteration is required in the marginal note. Formerly in England marginal notes were added after Bills were passed into law, but now they appear on the rolls of Parliament, and Maxwell thinks—see *Interpretation of Statutes*, 6th Ed., p. 76—that it is still doubtful whether they are in these circumstances to be taken as part of the statute or not. The better view seems to be that such a note is not an integral part of the Act, but that, when the construction is doubtful, it may be referred to as a contemporaneous exposition of the meaning. In the latest edition of the *Statutes Revised* the editors have clearly taken this view, for they have dealt very freely with the marginal notes, which have been considerably altered and abridged. In India there has been a similar change in practice, Act XV of 1854 having been the first Act introduced into Council and passed, as is done nowadays with marginal notes. In *Punardeo Narain Singh v. Ram Sarup Roy* (1898), 1 L R 25 Cal 808, it was held that marginal notes are not part of the Act to which they are added.

Sections

9 The marginal note may be used to test the question whether a given subject should be dealt with in one or more sections. If the marginal note cannot be made short without being vague or distinctive without being long the presumption is that the proposed section should be cut up into two or more sections. If a section is long and complex, it should be divided into sub sections. As to "section," see further note *ante*, p. 34. Provisos may be used to qualify or create an exception to a general rule or statement, but should not be used to state a general rule.

Provisos

Sentences

10 Each sentence should be as short and simple as possible. The rules to be laid down may be either general or particular, and either absolute or qualified.

When a rule is to apply only to a particular case or set of circumstances, it is usually convenient to state the case or set of circumstances first, and to let the rule follow. But when the rule is to apply to several cases or sets of circumstances, it is often convenient to state the rule first and enumerate the cases or sets of circumstances afterwards. Sections 319 and 320 of the Indian Penal Code illustrate these propositions. Section 319 states the case first and the rule afterwards, thus—
 "Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt." Section 320 has to deal with eight cases which may constitute grievous hurt. It therefore states the rule first and the eight cases afterwards thus—
 The following kinds of hurt
 only

only are designated as grievous—first," and then follow the eight cases

Where a rule is to be subject to qualifications, restrictions or exceptions, these should follow the statement of the rule. But it is sometimes convenient to prefix to the rule words shewing that it is to be so qualified, for instance such words as—"Subject to the exceptions hereinafter mentioned" or "Subject to the provisions of section**," or, as the case may be

Where possible, the enumeration of particulars should be avoided. It is almost impossible to make the enumeration exhaustive, and accidental omission may be construed as implying deliberate exclusion. To take an obvious illustration, the term person *prima facie* includes bodies corporate as well as natural persons (see ante p 28). It is preferable to use the term "person" rather than to attempt to enumerate what it includes by saying "man, woman, child, partnership, company, association, society, corporation," etc. The draftsman must always bear in mind the pitfalls which underlie the two maxims of construction *Noscitur a sociis*" and "*Expressio unius est exclusio alterius*"—see *Maxwell on Statutes* 6th Ed., p 547 and *In re Stockport Ragged Industrial and Reformatory Schools* (1899), L. J. 68 Ch. D. Part I, p 41. So too, where there is an enumeration of several persons or things, followed by an enactment intended to apply to all and each of them, care must be taken to make the enactment apply both generally and distributively. For instance, "A, B, C and D, or any one or more of them, may* *"

11 The language of a Bill should be precise,* but, Language where ordinary language is unambiguous, technical language should be avoided. No more words should be used than are necessary to make the meaning clear. Every superfluous word may raise a discussion in court. So too the same word should always be used to express the same thing. Nouns should be used in preference to pronouns even at the cost of repetition. Anything like elegance of style must always give way to precision of meaning. The use of synonyms cannot be justified in drafting, although no great weight is to be attached to a change of language—see *Maxwell's Interpretation of Statutes*, 6th Ed. p 566. Conversely, the same word must not be used with different meanings. If, in a particular place, it is necessary to use a term in a different sense from that which it bears in the rest of the Act =

special

* *E.g.* sentences such as the following should be avoided.—
"Ammunition shall only be sold by a licensed dealer hermetically sealed in an iron box."

special definition should be added to the clause in question (see, *e g*, the *Explanation* to s 203 of the Indian Penal Code)

An Act is intended to confer rights and create duties, and it should specify clearly on whom the rights are conferred and the duties imposed. A latent ambiguity may often be avoided by using the active instead of the passive form of the verb, *e g*, by saying that a particular person "may do" a particular thing, instead of saying that a particular thing "may be done."

"Shall" and
"May"

The use of the future conditional ("if he shall") should be avoided, the use of the word "shall" should be confined to the imperative, and the indicative should follow "if" in drafting. Forward references should, if possible, be avoided.

The word "shall" is the ordinary form of the legislative imperative and is equivalent to "must".* The use of the word "may", in conferring a power, has given rise to much difficulty. It has been held in many cases that the person on whom the power is conferred is bound to exercise it, and hence it has been said that "may" really means "must". But the English doctrine is now settled on an intelligible basis by a decision of the House of Lords. "The words *it shall be lawful*," says Lord Cairns "are words making that legal and possible which there would otherwise be no right or authority to do. They confer a faculty or power, and they do not of themselves do more than confer a faculty or power. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the title of the persons for whose benefit the power is to be exercised, which may couple the power with a duty and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so."—*Julius v Bishop of Orford* [1880], 5 A C, at p 222. In a subsequent case, Cotton L J says—"I think that great misconception is caused by saying that in some cases *may* means *must* or *shall*. It can never mean *must* as long as the English language retains its meaning, but it gives a power, and then it may be a question in what cases where, when a judge has a power given him by the word *may* it becomes his duty to exercise it."—*Nicholls v Baker* (1890), 44 Ch D, at p 270. Having regard to this principle, it is often well to confer a discretion in express terms, *e g*, by saying "the court may, in its discretion," or "the Local Government may, if

* As to the occasional construction of the word "shall" as merely directory see *Re Thurlow* (1835) 1 Q B 724.

if it thinks fit " But see Maxwell's *Interpretation of Statutes*, 6th Ed., p 424 *et seq* and *Craies on Statute Law*, 3rd Ed., p 252

12 A duty is incomplete without a sanction When **Penalties.** an Act requires a thing to be done, the draftsman must always consider what the consequences are to be if it is not done, and whether an express penalty for disobedience is required It is a well-known rule in England that when an Act of Parliament imposes a duty of a public nature, and specifies no penalty for its breach, any breach of that duty constitutes a misdemeanour at common law punishable with fine and imprisonment But there is no trace of this rule having ever been applied in India, and s 2 of the Indian Penal Code appears to negative it The Act consequently must deal explicitly with the consequences of disobedience They may be either civil or criminal or both Criminal penalties should always be carefully considered and apportioned to the nature of the offence When there are analogous provisions in the Indian Penal Code, it is sometimes expedient to make them apply, see, e g, s 473 of the City of Bombay Municipal Act, 1888 (Bombay Act III of 1888), and s 3 of the Epidemic Diseases Act, 1897 (III of 1897) See also the Criminal Tribes Act, 1924 (VI of 1924), sec 24

13 The practice of legislating by reference has often **Legislation by reference.**

lation only on its merits It is convenient to legislate by reference when a well known procedure can be applied, instead of creating a new and unfamiliar procedure applicable only to the particular case The multiplication of procedures is always an evil Section 25 of the General Clauses Act, 1897, *ante*, p 62, is a justifiable example of legislation by reference Unless the contrary is expressed, it applies to the recovery of all fines the familiar provisions of the Indian Penal Code and the Code of Criminal Procedure Legislation by reference is unjustifiable when it is resorted to for the purpose of avoiding the detailed consideration of proposed legislation The object of drafting is not to save trouble to the draftsman and slur over difficulties, but to make the law clear to those who have to administer it Act XXIV of 1841 is a bad example of legislation by reference It extends "to the territories of the East India Company, so far as applicable to the same," the provisions of two English Acts of Parliament (11 Geo 4 & 1 Will 4, caps 46 and 65) It is obvious that the applicability of the complicated

complicated provisions of these Acts can only be determined authoritatively by a series of decisions of the courts. Such legislation delegates the functions of the legislature to the courts to be carried into effect *ex post facto*, and at the expense of the suitors.

Amending Acts

14 In England an amending Bill for the most part merely refers to the Act intended to be amended, and then proceeds to lay down the new rules to be enacted, in fact, it amends legislation as if it were a part of the common law. In India a more convenient and logical practice is followed. The required amendments are drafted for incorporation into the original Act and some such forms as the following are used — ‘For section 21 of the said Act the following section shall be substituted namely —’ or ‘*After section 26 of the said Act the following section shall be inserted, namely —*’ The difference between the systems is illustrated by *e.g.*, s 8 of the Army (Annual) Act, 1885 in which it is provided that in all future copies of the principal Act—the Army Act (44 & 45 Vict, c 58)—the words directed by the amending Act to be substituted shall be printed therein and the words directed to be added thereto. A similar provision is made as regards the Naval Discipline Act (29 & 30 Vict, c 109)—see *e.g.*, s 7 (2) of the Naval Discipline Act, 1884 (47 & 48 Vict, c 39). See also s 45 (2) of the Government of India Act, 1919.

Consolidation Acts

15 When numerous amendments are proposed to be made in an Act, it is always well to consider whether it is not better to repeal the original Act and re enact it with the proposed amendments. This course diminishes the bulk of the Statute book and makes the law easier for those who have to administer it for they have only one document to consult instead of two. There is also this further advantage, that the whole Act speaks from one and the same time. Under modern conditions however, this is a counsel of perfection and the course suggested is rarely, if ever followed. On the contrary, great care is taken so to frame the title and preamble of an amending Bill as to preclude, the moving, during the passage of the Bill through the legislature of amendments not germane to the particular object or objects of the Bill as drawn. The usual form of words adopted for this purpose is (in the title) ‘A Bill further to amend the Cantonments Act 1924 *for a certain purpose*,’ and (in the preamble) ‘Whereas it is expedient further to amend the Cantonments Act 1924 *for the purpose hereinafter appearing*’ These formulae have stood the test of actual experience, the chair having on more than one occasion ruled out of order amendments proposed

proposed in sections of the Act to be amended which were not touched by the amending Bill as introduced. The practical impossibility of repealing and re-enacting is illustrated by recent amendments to the Code of Criminal Procedure, 1898, and the Indian Factories Act, 1911. Although the amendments made have been very numerous and important, they have been incorporated into the existing Acts in order to avoid the alteration of other parts of the Acts which it was desired to retain intact. On such occasions, however, the Legislative Department invariably reprints the Act as soon as possible with the new amendments shown *in loco*.

When an Act has been several times amended, there is always a strong *prima facie* case for consolidation. The Indian form of amending legislation, though it makes consolidation easy, tends rather to disguise the fact that the differ

homogeneous piece c
different times and

since an Act passed before the General Clauses Act 1887 and amended by an Act passed after 1887. It might, in the absence of sufficient care on the part of the draftsman, so happen that, by the tacit incorporation of the General Clauses Act, the same terms in the original, and in the amending Act would have different meanings and operation. In drafting a consolidating Bill, the draftsman of course must consider and, if necessary, provide for the operation of the General Clauses Act or any other general legislation affecting the Act he is dealing with. Thus, in *Administrator General of Bengal v Premal Mullick* (1895) L R 22 I A 107 at p 114 and I L R 22 Cal 788 the Privy Council pointed out that though s 30 of Act XXIV of 1867 was re-enacted in identical words by s 31 of the Administrator General's Act 1874 (II of 1874) its operation in the latter Act was much more extensive because in the meantime the Hindu Wills Act, 1870 (XXIV of 1870) had been passed. For the canons for construing a codifying or consolidating Act see *ibid* at pp 115-116 *Bart of England v Vagliano* (1891) A C at p 145 *per Lord Herschell*, and *Varendra Nath Sircar v Kamlabaiji Das* (1895) L R 21 I A 18.

Before the year 1921 no purely consolidating Act had been passed by the legislature in India although the Indian Petroleum Act 1899 (VIII of 1899) and the Glanders and Pox Act 1899 (XIII of 1899) are Acts in which various small amendments in the existing law had been found necessary and opportunity was taken to repeal and re-enact the existing enactments.

In

Laws and Regulations” See also The Madras, Bengal and Bombay Children (Supplementary) Act XXXV of 1925 In spite of the fact that this particular form of words was employed in that Act of 1925, it has been held to be undesirable as purporting to make valid that which the Act of Parliament does not empower a local legislature to do The more correct form of validating legislation is, therefore, to repeal the invalid provision and re enact it as a substantive provision in an Act of the Indian legislature [See the Punjab Courts (Supplementing) Act, 1919 (IX of 1919), the Oudh Courts (Supplementary) Act, 1925 (XXXII of 1925), and the Bengal Criminal Law Amendment (Supplementary) Act 1925]

18 Statute Law Revision Acts or as they are called in India Repealing and Amending Acts are from time to time passed with the object of making formal amendments in the Statute book and expressly and specifically repealing enactments which are spent, or have ceased to be in force otherwise than by express, specific repeal, or have by lapse of time or otherwise become unnecessary The object of these Acts is to excise dead matter, prune off superfluities and reject inconsistent enactments” (see *Crates on Statute Law* 3rd Ed p 296) For the latest examples of these see Acts XXXI of 1920 XI of 1923 VII of 1924 X of 1927 XII of 1927 and XVIII of 1927

19 In England the practice is growing up of prefixing to Bills a memorandum explaining the purport of the proposed legislation In India since 1862 it has been the uniform practice to append to every Bill a “Statement of Objects and Reasons” This convenient procedure was probably borrowed from France where a ‘Projet de loi’ is always accompanied by an ‘Exposé des motifs’ The French courts continually resort to the ‘Exposé des motifs’ in interpreting the Acts of the legislature, but both in England and in India it is established that the proceedings of the legislature can not be referred to in the judicial interpretation of a statute—*Administrator General of Bengal v. Prem Lal Mullick* (1895) L R 22 I A 107 and I I R 22 Cal at pp 798, 799 The Statement of Objects and Reasons is useful historically or as a lay commentary but there are two sufficient reasons why the courts cannot rely on it in construing an Act In the first place the Statement refers to the Bill as introduced whereas it may be considerably altered before it is passed In the second place the meaning of the legislature must be deduced from the language it has actually used and not from its presumed intentions When its language is ambiguous (but

(but not otherwise) reference may be made to the previous state of the law, but even for this purpose the Statement of Objects and Reasons is not an authoritative statement of that law

Illustrations

20 In India the practice was at one time prevalent of giving illustrations in the Act itself—see, for instance, the numerous illustrations to the Indian Penal Code. In dealing with abstract questions of substantive law, there is perhaps something to be said for this practice, but in ordinary legislation the practice is a dangerous one because the draftsman is apt to be content with vague or inaccurate language and to rely on illustration to define his meaning. The courts too appear to differ as to how far illustrations are to be construed as binding enactments. see *R v Cassidy* (1867) 4 Bom H C Rep C 17. *R v Rahimat* (1876) 1 L R 1 Bom 147. *Nanak Ram v Mehın Jal* (1877) 1 L R 1 All 47, and *Koylsh v Sanatun* (1881) 1 L R 7 Cal 132. The Judicial Committee on a recent case held that it is the duty of a Court of Law to accept if that can be done, the illustration given as being both of relevance and of value in the construction of the text—*Mahomed Syedel Arriffin v Ish Ooi Gark* [1916] 2 A C 57. In modern times this practice has been discontinued.

Specimen forms

21 The forms which follow are specimen forms for guidance in drafting. As already remarked they must not be followed blindly, but their applicability to each case should be considered. The italics indicate the skeleton of each form while the words in Roman type are inserted by way of illustration.

TITLE

Title

- 1 *A Bill further to amend [the Indian Penal Code]*
- 2 *A Bill to consolidate and amend the law relating to [Stamps]*
- 3 *A Bill to make provision for certain matters connected with*
- 4 *A Bill to repeal certain obsolete enactments and to amend certain other enactments*

Every Indian Bill has a title succinctly describing the nature of the proposed measure. This title, which is prefixed to the Bill and retained in the Act, must not be confounded with the short title usually conferred by the first section of the Act itself. In framing the title care should be taken that it is sufficiently wide to cover

all'

all the provisions of the Bill, and that it is not too vague, as to invite amendments outside the scope of the proposed measure (See *para 15 ante*, p 94)

In England the officers of the House (Lords or Commons as the case may be) are responsible for seeing that the title covers the provisions of the Bill. For the effect of the title in aiding construction see *Craies on Statute Law* pp 173—177, Ed 3, *Powell v Kempton Park Race course Company* [1897] 2 Q B C A at p 289

PREAMBLE

1 *Whereas it is expedient* [to amend (or further to Preamble amend) the Indian Penal Code]

2 *Whereas it is expedient that certain amendments should be made in the enactments specified in the Second Schedule,*

And whereas it is also expedient that certain enactments specified in the First Schedule and which are spent, or have ceased to be in force otherwise than by express repeal, or have by lapse of time or otherwise become unnecessary, should be expressly and specifically repealed

In England the modern practice is to dispense with preambles in public Acts unless there are special circumstances which it is necessary to recite and most of the preambles to the older Acts have been repealed. But in India it has been the practice to prefix a preamble to every Act. Sometimes the preamble merely repeats the title of the Act and in such cases it seems a somewhat superfluous piece of verbiage. For more definite forms of preamble see Act IV of 1880 Act IV of 1895 Act XVII of 1895, the Indian Naval Armament Act 1923 (VII of 1923) the Indian Penal Code (Amendment) Act 1923 (XX of 1923) the Steel Industry (Protection) Act 1927 (III of 1927) and many others. The proper function of a preamble is to explain certain facts which are necessary to be explained before the enactments contained in the Act can be understood' (Thring's *Practical Legislation* p 92) As to the effect of the preamble on the construction of the Act see *Craies on Statute Law* 3rd Ed pp 180 186 *Powell v Kempton Park Race course Company* [1897] 2 Q B C A at pp 289—290 and *Kennard v Cory and Son* [1898] 2 Q B 578. For the effect of recitals of fact in an Act, see *Craies on Statute Law*, 3rd Ed pp 40-43 429-433

ENACTING

ENACTING FORMULA

Enacting
formula.*It is hereby enacted as follows —*

The corresponding English formula is a more complicated one, but its origin is historical—see Anson's *Law of the Constitution*, Vol I, 5th Ed, p 262 It runs as follows “Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows ”

SHORT TITLE

Short title

1 *This Act may be called the* [Indian Penal Code, or Indian Stamp Act, 1899, or as the case may be]

2 *This Act may be called the* [Indian Tariff (Amendment) Act, 1928]

For the citation of enactments by their short titles, see s 28 of the General Clauses Act 1897, and notes thereto, *ante*, pp 64, 65 Where in any enactment it is necessary to cite or refer to an English Act of Parliament its short title should be cited and a reference to the session and chapter inserted in the margin Thus, if the Act cited be the Indian Councils Act, 1861 there should be a marginal reference—24 & 25 Vict, c 67 A similar rule applies to Indian Acts thus if the Act cited be the Indian Penal Code, the marginal reference should be—XLV of 1860

A short title should be short, for it is merely a label or index heading to the enactment in question A good example to avoid is furnished by an English Act—“The Fisheries (Oyster Crab and Lobster) Act (1877) ”

EXTENT CLAUSE

Extent
Clause

1 *It [i.e., This Act] extends to the whole of British India*

2 *It extends to the whole of British India, including* British Baluchistan and the Sonthal Parganas*

3 *It*

* Before the Government of India Act of 1919 was passed the application of all enactments passed by the Indian legislature and the local legislature was barred in these two places as well as other tracts known as ‘de-regionalized territories’ viz the District of Angul the Pargana of Spiti and the Hill District of Arakan by Regulations made under the Government of India Act 1870 (33 Vict c 7) and unless an enactment was expressed by special mention in its extent clause to extend to any of these territories it could not apply *proprio rigore* thereto [See British Baluchistan Laws Regulation 1913 s 3 the Sonthal Parganas Settlement Regulation 1871 s 3 the

§ It extends to the whole of British India, and applies also to all Christian subjects of His Majesty in India (Cf Act XV of 1872)

4 It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas, and applies also—

- (a) to every Indian subject of His Majesty in any place without and beyond British India,
- (b) to every other British subject within the territories of any Prince or Chief in India in alliance with His Majesty,
- (c) to every servant of His Majesty, whether a British subject or not within the territories of any such Prince or Chief

5 It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas and applies also, within the dominions of Princes and Chiefs in India in alliance with His Majesty, to British subjects in those dominions who are in the service of the Government of India or of a local authority established

17

Angul Laws Regulation 1913 (III of 1913) s 3 the Spiti Regulation 1873 (I of 1873) s 14 and the Arakan Hill District Laws Regulation 1916 (I of 1916) s 2) There were certain other for which Regulations under ' passed deemed Government a power to Regulations I of 1895, V c

2 None of these Regulations has been repealed but the position has altered since the passing of the Government of India Act of 1919. By notifications under section 59A (2) of the Government of India Act certain places in British India including those known as de-regulationized territories with the exception of British Baluchistan, have been declared as 'backward tracts' and in some of these places the provisions of the Government of India Act which confer powers on the Indian legislature and on the local legislature to make laws for British India in the Sonthal Parganas the modification of the provisions of the Government of India Act which confer powers on the Indian legislature and on the local legislature to make laws for British India in the Sonthal Parganas it is therefore necessary to make special mention of these territories. The other territories mentioned above have been definitely removed from the purview of the legislature.

3 For a complete list of "backward tracts" and the exceptions and modifications subject to which the Government of India Act applies to these tracts see notifications under section 52A (2) of the Government of India Act printed in *extenso* in the publication "Government of India Act and Rules thereunder" issued by the Legislative Department.

in the exercise of the powers of the Governor General in Council in that behalf, and to all other servants of His Majesty in those dominions [Cf the Indian Income-tax Act, 1922 (XI of 1922)]

It extends to the whole of British India, and shall apply to the High Courts of Judicature at Fort William in Bengal and at Madras, Bombay, Allahabad, Patna and Rangoon and to such other High Courts within the meaning of clause (24) of section 3 of the General Clauses Act, 1897, as the Governor General in Council may, by notification in the Gazette of India declare to be High Courts to which this Act applies [Cf the Indian Bar Councils Act, 1926 (XXXVIII of 1926)]

7 *It extends to the whole of British India*

Provided that the Governor General in Council may, by notification in the Gazette of India, direct that this Act or any specified part thereof shall not extend to any specified province or to any specified trust or class of trusts [Cf the Charitable and Religious Trusts Act, 1920 (XIV of 1920)]

8 *It extends in the first instance to the Governors' provinces, but the Local Government of any other province may, by notification in the local official Gazette, extend it to the province or any specified part or area thereof*

[This is not taken from any actual precedent and instances where an Act has only partial extension with power to extend it to other parts of British India are rare. The more usual course adopted by the central legislature is to pass an Act applying to the whole of British India and leaving it to the Governor General in Council or the Local Government to bring it into force if and when he or it thinks fit. See however, s 1 (3) of Act VIII of 1897]

9 For a peculiar provision which is *suu generis* but might at any time form a useful precedent cf. s 2 of the Special Laws Repeal Act, 1922 (IV of 1922) (Repealed by Act VII of 1927)

For general definitions of "British India" and "India," see *ante*, pp 9 and 22. For the extra territorial powers of the Indian legislature see *ante*, p 70.

Where an Act simply amends another Act, it naturally has the same extent as the Act it amends and it is therefore ordinarily unnecessary to insert an extent clause in the Bill. This would be necessary if an all India Act were amended for the purpose of its applica-
tion

tion to a part only of British India but this is a course which the Government of India have never themselves adopted and they have deprecated it when it has been suggested by Local Governments. Outstanding exceptions are the various provincial Acts which have amended in their local application the Court-fees Act, 1870 (VII of 1870) and the Indian Stamp Act, 1899, (II of 1899). This however was necessitated by the division of subjects into 'Central' and 'Provincial' by the Devolution Rules made under s. 45A (1) of the Government of India Act.

An Act of the Governor General in Council *prima facie* extends to the whole of British India, though not beyond but it is usual and convenient to specify the extent explicitly.

The English practice is to make the extent clause a separate section. In India the practice is to throw the short title, the extent clause and the commencement clause if any into a single section divided into three subsections. For the canons for construing the extent of Acts of Parliament see *ante* p. 68.

COMMENCEMENT CLAUSE

- 1 *It [i.e., This Act] shall come into force at once* Commence
ment

This form of commencement clause has been rendered obsolete by the enactment of s. 6 of the General Clauses Act, 1897 and is now never used.

- 2 *It shall come into force on* [the first day of July, 1929]

3 *It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India appoint in this behalf*

4 *This section and sections [2, 3, 16 and 17] shall come into force at once and the remaining provisions of this Act shall come into force in any province on such date as the Local Government may, by notification in the local official Gazette appoint in this behalf*

[Cf. section 1 (2) of the Bar Councils Act, 1926 (XXXVIII of 1926)]

- 5 *It shall remain in force only up to the* [thirty-first day of December, 1932]

In England the commencement clause is usually inserted as a separate section. In India it is usually inserted as a subsection in the section which contains the short title and extent.

See "commencement" defined by s 3 (12) of the General Clauses Act, 1897, *ante*, p 14, and see s 5, *ante*, p 41, for the coming into operation of Acts of the Governor General in Council

REPEALING CLAUSE

Repeal.

The Acts specified in the Schedule are repealed to the extent mentioned in the fourth column thereof.

THE SCHEDULE

Enactments repealed

(See section " ")

<i>Year</i>	<i>No</i>	<i>Short title or subject</i>	<i>Extent of repeal.</i>
-------------	-----------	-------------------------------	--------------------------

The effect of the repeal on previous transactions is dealt with by ss 6 and 7 of the General Clauses Act, 1897, *ante*, pp 43 and 46

When the Act to be repealed has a short title, the short title should be inserted in column 3

In a "Repealing and Amending Act," or, as it is called in England, a Statute Law Revision Act, a fifth column should be added to the Schedule in the Bill. In this should be inserted the reason for each proposed repeal. The fifth column is omitted when the Bill is passed. An exceptionally wide saving clause is added to such Acts, see s 9, Act V of 1897. Ordinarily, the saving for past transactions imported by s 6 of the General Clauses Act, 1897, is quite wide enough.

A repealing clause now invariably finds a place at the end of a Bill, so that the structure of the Act in which it is contained may remain unimpaired when the clause is itself repealed.

INTERPRETATION CLAUSE

Definitions

In this Act, unless there is anything repugnant in the subject or context,—

(1) ["spirit"] means [any liquor containing alcohol obtained by distillation]

(2) ["will"] includes [a codicil]

(3) ["prescribed"] means [prescribed by rules made under this Act]

Most

Most of the definitions in common use are now contained in s 3 of the General Clauses Act, 1897, *ante*, pp 6—39 and will apply automatically to Acts and Regulations unless expressly excluded

A general definition clause should always be guarded by the formula given above, and definitions should never be given unnecessarily, as they may cause embarrassment. Definitions are required only (1) to avoid tedious periphrases, and (2) to explain terms which are of ambiguous or uncertain meaning

Where a definition is intended to be exhaustive, the word "means" should be used, and when it is intended to be enumerative, the word "includes" should be used. It is often useful without defining a term to point out that for the purposes of the Act, it includes some subject matter which otherwise there might be a doubt about see *ante* p 24. The expression "means and includes" should be avoided as inevitably giving rise to doubts (*cf* *Craies on Statute Law*, 3rd Ed p 190) but a definition such as that of "district" in s 2 (4) of the Code of Civil Procedure 1908 (V of 1908), is quite in order and this form frequently proves very useful as also the form ' means but does not include

An unnatural meaning should never be put upon a term by definition. Suppose in an Act relating to horses it was desired to apply some of its provisions to horned cattle. The proper course is to say that the provisions in question shall, with any necessary modifications apply also to horned cattle and not to say that for the purpose of the provisions in question the term "horse" means or includes horned cattle.

Definitions should always be arranged in alphabetical order. The alphabetical order is intelligible to every one while the logical order may be intelligible only to the draftsman.

CLAUSE BINDING THE CROWN

- 1 *The provisions of this Act shall be binding on the Crown* Provisions binding the Crown.
- 2 *Sections [3 and 4] shall be binding on the Crown*

As to the power of Acts of the Governor General in Council to bind the Crown see *ante* p 77 and for precedents see s 150 of the Bankruptcy Act, 1883 (46 & 47 Vict, c 52), s 19 of the Indian Factories Act, 1881 (XV of 1881) s 17 of the Inventions and Designs Act, 1889 (V of 1889), s 22 of the Indian Arbitration Act,

Act, 1899 (IX of 1899), s 4 of the Indian Merchant Shipping Act (XXI of 1923), and s 33 of the Indian Boilers Act (V of 1923). Cf however, at the same time s 2 of the Land Acquisition (Mines) Act, 1885 (XVIII of 1885), which saves the rights of the Government, and the Crown Grants Act, 1895 (XV of 1895).

RULE-MAKING CLAUSE

Power to
make rules

1 (1) *The [Governor General in Council or Local Government] may make rules for the purpose of giving effect to the provisions of this Act*

(2) *In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely —*

(a)

(b)

(c)

(3) *All rules made under this Act [or section] shall be published in the Gazette of India [or, local official Gazette, as the case may be], and, on such publication, shall have effect as if enacted in this Act*

3 *The [Governor General in Council] may, after [or subject to the condition of] previous publication, make rules, etc*

For a form giving power to both the Governor General in Council and the Local Government to make rules, see s 19, Act VII of 1929

4 In some enactments, rules are made subject to the approval of the legislature. Examples of such provisions are s 8 of the Cotton Transport Act III of 1923 and sec 21 (2) of the Indian Emigration Act (VII of 1922). In England the enactments conferring rule making powers frequently require that rules so made are to be laid before Parliament and can be revised or rescinded by a resolution (See sec 129 A of the Government of India Act)

Provisions to the effect that rules made under an Act are to be laid before the legislature and are liable to be rescinded or modified by a resolution [see sec 221 of the Bombay City Municipalities Act 1925 (XVIII of 1925)] have been thought to be *ultra vires* of the local legislature on the ground that the Indian and local legislatures have no power to pass resolutions binding on the executive. Whatever the merits of this contention may be (the question has not yet come before the Courts) such a provision must lead to inconvenience in practice and should be avoided if possible.

For

For the effect of the enactment that rules shall have the same effect as if enacted in the Act, see the ruling of the House of Lords in *Institute of Patent Agents v. Lockwood*, referred to, *ante*, p. 83. Cf. s. 4 (3) of the Electricity Act, 1887 (XIII of 1887). This provision is often omitted, in which case, instead of sub-clause (3) in the illustration above, the words "by publication in the Gazette of India [or local official Gazette]" are inserted after the word "may" in sub-clause (1).

It is to be noted that by virtue of the General Clauses Act, 1897, the formulæ given above draw after them various consequences, which need not be expressly stated, but which must be expressly negatived, if it is desired to exclude or vary them. By s. 21, the power to "make" rules includes a power to add to, alter or revoke them. By s. 20, any definitions given by the Act will be imported into the rules made under it, so that it is unnecessary to repeat them. By s. 23, if the rule-making power is given "subject to the condition of previous publication," all the provisions of that section as to previous publication thereupon apply. Compare the provisions of the Rules Publication Act, 1893 (56 & 57 Vict., c. 66). S. 2 of that Act provides for making interim rules in cases of emergency. By s. 24 of the General Clauses Act, 1897, if rules have been made under an Act which is repealed and re-enacted, they will still continue in force, and, if it is desired to supersede them, that must be done expressly. And by s. 25, if the rules provide for the imposition of fines, the provisions of the Indian Penal Code and the Code of Criminal Procedure for the time being in force in relation to fines will apply automatically.

PROTECTING CLAUSE.

No suit, prosecution or other legal proceeding whatsoever shall be entertained in any Court against any officer [or person] for anything in good faith done or intended to be done in pursuance or execution of this Act. Protection to officers, etc.

For further examples, see s. 4 of the Epidemic Diseases Act, 1897 (III of 1897), s. 74 of the Indian Forest Act (XVI of 1927), and s. 17 of the Indian Bar Councils Act, XXXVIII of 1926. Judicial officers are protected by Act XVIII of 1850. But, where an Act gives new or unusual executive powers, it is often advisable to insert an express protection to the persons who act under it. For the meaning of "good faith" in Acts passed after the General Clauses Act, 1897, see s. 3 (20), *ante*, p. 17. Cf. the provisions of the Public Authorities Protection

Act,

Act, 1893 (56 & 57 Vict, c 61), which regulates suits and proceedings against public officers when such suits are allowed to be brought

SPECIAL SAVING CLAUSE

Powers of
Act to be
cumulative.

1 *All powers, rights and remedies given by this Act shall be in addition to, and not in derogation of, any other powers, rights and remedies conferred by any Act, law or custom, and all such other powers, rights and remedies may be exercised and put in force in the same manner and by the same authority as if this Act had not been passed*

Saving for
power to
proceed
under other
law

2 *Nothing in this Act shall be in derogation of any power otherwise vested in [the Local Government], and the [Local Government] may exercise for the purposes of this Act all powers otherwise vested in it in relation to * * **

Saving of
civil remedy

3 *If the Court before whom a person is charged with an offence punishable under this Act thinks that proceedings ought to be taken against him for the offence under any other enactment, the Court may adjourn the case to enable such proceedings to be taken*

Saving as
to liability
for nuisance

4 *A proceeding or conviction for any act declared by this Act to be an offence [or punishable by or under this Act] shall not affect any civil remedy to which any person aggrieved by such act may be entitled*

Saving.

5 *Nothing in this Act shall legalize any act which would, but for this Act, be a nuisance or be otherwise contrary to law, or deprive any person of any remedy by suit, prosecution or otherwise, to which he would have been entitled if this Act had not been passed*

6 *Nothing in this Act shall be deemed to affect—*

- (a) *the terms or incidents of any transfer or disposition of property made or effected before the day of* ,
- (b) *the validity, invalidity, effect or consequences of anything already done or suffered before the aforesaid date,*
- (c) *any right, title, obligation or liability already acquired, accrued or incurred before such date,*
- (d) *any remedy or proceeding in respect of such right, title, obligation or liability, or*
- (e) *anything done in the course of any proceeding pending in any Court on the aforesaid date,*
and

and any such remedy or proceeding may be enforced, instituted or continued, as the case may be, as if this Act had not been passed

By s 3 (2) of the General Clauses Act, 1897, "act" includes a wrongful omission. To a great extent the above forms of savings are declaratory, but it is sometimes convenient to insert them expressly. For further forms of special savings, see s 18 of the Merchandise Marks Act, 1889 (IV of 1889)

The ordinary
for in repeals by
(ante, p 42), a
ordinary purpos
clause see the
Amending Acts, e g, Act V of 1897

BAR OF CIVIL SUITS

Examples mentioned under the heading 'protecting clause' show how officers can be absolved from being sued in Civil Courts in respect of acts done or purporting to be done in the exercise of official duties. Special tribunals are at times created, and the jurisdiction of the ordinary Civil Courts to interfere with their decisions is excluded either by an express enactment or impliedly

BAR OF JURISDICTION OF A CIVIL COURT EXPRESSLY

The decision of the tribunal shall be final and no suit shall lie in any Civil Court in respect of the matters decided by the Tribunal (s 45, Delhi University Act VIII of 1922)

See also s 67, Act XI of 1922, and s 3 (5), Act VIII of 1923

PROVISION AS TO NOTICES

All notices and orders under this Act shall be in writing, and where any notice, order or document under this Act requires authentication by the [municipal committee] the signature thereof by the [secretary to the municipal committee] shall be sufficient authentication. Form of notices, etc.

Compare the Public Health (London) Act, 1891 (54 & 55 Vict., = 76), s 127, and see "writing" defined by s 3 (58) of the General Clauses Act, 1897, ante, p 92

PROVISION AS TO SERVICE

(1) *Any notice, order or other document required or authorized to be served under this Act may be served either—* Service of notices, etc.

(a) *by delivering it [or a true copy of it] to the person on whom it is to be served, or*

(b) *by*

- (b) by leaving it [or a true copy of it] at the usual or last known place of abode of that person; or
- (c) by forwarding it by post in a cover addressed to that person at his usual or last known place of abode, or
- (d) if addressed to the owner or occupier of premises by delivering it [or a true copy of it] to some person on the premises, or, if there is no person on the premises who can be so served, then by fixing it [or a true copy of it] on some conspicuous part of the premises

(2) Any notice, order or other document by this Act required or authorized to be served on the owner or occupier of premises may be addressed by the description of the "owner" or "occupier" of the premises (naming them) without further name or description

(3) Any notice required or authorized for the purposes of this Act to be served on [the municipal committee] shall be deemed to be duly served if delivered at or sent by post to the office of [the municipal committee] addressed to that authority [or to their secretary]

Compare the Public Health (London) Act, 1891 (54 & 55 Vict., c. 76), s. 128, the Indian Railways Act, 1890 (I. of 1890), ss. 139-141, the Land Acquisition Act 1894 (I of 1894), s. 45, and the Cantonments Act, 1924, s. 254. For service by post, see s. 27 of the General Clauses Act, 1897, *ante*, p. 64

SPECIAL COMMISSION

Powers of
Commission

Whereas a Commission has been issued by the Governor General in Council whereby [A, B, C, D, E, and F], hereinafter referred to as "the Commissioners," have been directed to inquire into and report upon

And whereas, for the effectual conduct of the inquiry, it is expedient to confer special powers upon the Commissioners,

It is hereby enacted as follows —

1 The Commissioners shall have all such rights, powers and privileges as are vested in [the High Court] in relation to any civil suit in respect of the following matters —

- (a) the enforcing the attendance of witnesses and the examining them on oath.

(b) the

- (b) the compelling the production of documents, and
- (c) the punishment of persons guilty of contempt

And a summons signed by one of the Commissioners may be substituted for, and shall be equivalent to, any formal process capable of being issued in any suit for enforcing the attendance of witnesses or compelling the production of documents

2 A warrant of committal to prison issued for the purpose of enforcing the powers conferred by this section shall be signed by one of the Commissioners, and shall specify the prison to which the offender is to be committed, and shall not authorize the imprisonment of the offender for a period exceeding [three] months Committal.

3 (1) Every person examined as a witness in an inquiry before the Commissioners who, in the opinion of the Commissioners, makes a full and true disclosure touching all the matters in respect of which he is examined, shall be entitled to receive a certificate signed by the Commissioners [or one of them] stating that the witness has made a full and true disclosure as aforesaid Indemnity to witnesses

(2) If any civil or criminal proceeding is at any time thereafter instituted against any such witness in respect of any matter touching which he has been so examined, the Court having cognizance of the case shall on proof of the certificate stay the proceeding, and may in its discretion award to the witness such costs as he may be put to in or by reason of the proceeding

(3) Provided that no evidence taken under this Act shall be admissible against any person in any civil or criminal proceeding except in the case of a witness accused of having given false evidence before the Commissioners or any of them

Compare the Metropolitan Board Commission Act, 1888 (51 Vict. c. 6), and the Special Commission Act (51 & 52 Vict., c. 35) See also *Ex King Thebaw's* Act, 1895 (58 of 1895) Other clauses may be necessary to provide for vacancies in the Commission or other matters, and the applicability of the skeleton clauses given above must be considered in each case For a precedent of power to appear by recognized agent or pleader, see the Code of Civil Procedure 1908 (V of 1908), Schedule I, Order III

PENAL CLAUSE

Whoever, in contravention of the provisions of this section, . . . shall be punishable with imprisonment for a term which may extend to three months Ordinary penal clause.

months, or with fine which may extend to one hundred rupees, or with both

Penalty for subsequent conviction.

Whoever, having already been convicted of an offence under this section, is again convicted thereunder, shall, on every such subsequent conviction be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both

Compare s 58 (2) of the Indian Post Office Act, 1898 (VI of 1898), and ss 22 and 23 of the Criminal Tribes Act, 1924 (VI of 1924)

Penalty for continuing breach.

Whoever commits a breach of the provisions of this section shall be punishable with fine which may extend to one hundred rupees, and, in the case of a continuing breach, with fine which, in addition to such fine as aforesaid, may extend to five rupees for every day after the first [or after the date of first conviction] during which the breach continues [or in regard to which he is proved to have persisted in the breach]

Compare s 63 of the Thames Navigation Act, 1866 (29 & 30 Vict, c 89), s 86 of the Friendly Societies Act, 1896 (59 & 60 Vict, c 25), and ss 124 and 283 of the Cantonments Act, 1924 (II of 1924) For the construction of provisions penalizing continuing breaches, see *In re Limbay Tulsiram* (1897), I L R 22 Bom 766, and *Queen-Empress v. William Plumner* (1897), *ibid*, 841.

EXEMPTING CLAUSES

Exempting clauses

For forms of clauses giving power to exempt persons or things from the operation of an Act, see s 35 of the Court-fees Act, 1870 (VII of 1870), s 23 of the Sea Customs Act, 1878 (VIII of 1878), s 5 of the Indian Income tax Act, 1886 (II of 1886), s 9 of the Indian Stamp Act, 1899 (II of 1899), s 21 of the Indian Petroleum Act, 1899 (VIII of 1899), s 18 of the Indian Lighthouse Act, 1927 (XVII of 1927), and s 20 of the Indian Insurance Companies Act, 1928 (XX of 1928)

SCHEDULES

Schedules

For the ordinary form of schedule of repeals, see *ante*, p 104 A schedule is an integral part of an Act—see *ante*, p 33, and its use is a mere matter of convenience Matters of principle should not be included in a schedule, which ought to be confined to matters of detail, such as forms, catalogues, tables of fees or rates and similar matters See, for example, the schedules to the Code of Criminal Procedure, 1898 (Act V of 1898),
and

and the Workmen's Compensation Act, 1923 (VIII of 1923) Compare, however, the First Schedule to the Code of Civil Procedure, 1908 (V of 1908) There must, of course, be a substantive clause in the Bill referring to the schedule

STATUTORY NOTIFICATION

I The following draft of certain rules, which it is proposed to make in exercise of the powers conferred by sub section (1) of section 191 of the Indian Merchant Shipping Act, 1923 (XXI of 1923), is published, as required by sub section (4) of the said section, for the information of all persons likely to be affected thereby, and notice is hereby given that the draft will be taken into consideration by the Governor General in Council on or after the 1st January, 1929 Any objection or suggestion which may be received from any person with respect to the draft before the said date will be considered by the Governor General in Council

Notification publishing for criticism rules which require 'previous publication'.
See Gen. Clauses Act 1897 (X of 1897) s. 23

DRAFT RULES

II In exercise of the powers conferred by section 6 of the Cotton Industry (Statistics) Act 1926 (XX of 1926) the Governor General in Council is pleased to make the following rules —

Notification making rules under an Act.

1 These Rules may be called the Cotton Industry (Statistics) Rules, 1926

III In exercise of the powers conferred by sections 5 and 5A of the Scheduled Districts Act 1874 (XIV of 1874), as in force in the Pargana of Manpur the Chief Commissioner is pleased to extend the 'United Provinces Town Areas Act 1914 (U P Act II of 1914)' to the said Pargana, subject to any amendments to which the said Act is for the time being subject in the territories to which it generally applies and subject also to the following modifications namely—

Notification extending an enactment with modifications

IV In exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council 1902 and of all other powers enabling him in that behalf and to provide for the administration of the Administered Areas in the Hyderabad State namely the Cantonments of Secunderabad and Aurangabad the Hyderabad Residency Bazar and the lands in the Hyderabad State occupied by His

Notification under the Indian (Foreign Jurisdiction) Order in Council, 1902

Exalted

Exalted Highness the Nizam's Guaranteed State Railway system, by the South East main line of the Great Indian Peninsula Railway, by the broad gauge North West line of the Madras and Southern Maratha Railway, by the Secunderabad Gadwal and Gadwal Hyderabad Frontier near the Kurnool sections of the Secunderabad Gidlag Railway and by the Kazipet Bulhushah Railway (hereinafter styled the 'Railway Lands'), the Governor General in Council is pleased in supersession of the notification of the Government of India in the Foreign Department No 582 I B, dated the 22nd March 1913 and of all notifications amending the same to apply the enactments specified in the first column of the schedule hereto annexed to such of the said Administered Areas as are specified in the second column thereof in so far as the same may be applicable thereto and subject to any amendments to which the enactments are for the time being subject in British India

Provided, first that in the enactments as so applied (except where the context or the modifications hereinafter referred to otherwise require) references to a Local Government or the Chief Controlling Revenue Authority shall be read as referring to the Resident at Hyderabad references to a Secretary to a Local Government as referring to the Secretary to the Resident at Hyderabad references to a High Court as referring to the Court of the Resident at Hyderabad and references to British India or to a province or to the territories subject to or administered by a Local Government as referring to the Administered Area or Areas to which the enactment wherein the expression occurs has been applied

Provided secondly that the further modifications and restrictions set forth in the said schedule shall be made in the enactments as so applied

Provided thirdly that for the purposes of facilitating the application of the said enactments any Court in any area to which the same may have been applied may construe the provisions thereof and any enactments, or laws, rules, forms or by-laws thereunder with such alterations not affecting the substance as may be necessary or proper to adapt them to the matter before the Court

Provided fourthly, that subject to the provisions of this notification the Resident at Hyderabad may direct by what officer any authority or power under the said enactments shall be exercised

Provided fifthly that all civil and criminal and other proceedings pending at the date of this notification shall be carried on as if this notification had not been issued, but

but that, save as aforesaid, all proceedings commenced, officers appointed or authorized, jurisdictions or powers conferred or confirmed, notifications published, rules or bye laws made, orders passed and things done under any of the enactments specified in the notifications hereby superseded in the said Administered Areas shall be, as far as may be, deemed to have been respectively commenced, appointed or authorized, conferred or confirmed, published, made, passed and done, under the corresponding enactments specified in this notification

* * * * *

V In exercise of the powers conferred by sub section (I) of section 4 of the Cantonments Act, 1924 (II of 1924) and with the previous sanction of the Governor General in Council, the Governor of Burma in Council is pleased to declare his intention to exclude from the Rangoon Cantonment the area specified in the schedule hereto annexed

* * * * *

Notification
by a Local
Government
with the pre-
vious sanc-
tion of the
Governor
General in
Council

INDEX.

(The references are to pages)

A

Abet—		
defined	.	6
Act (thing done)—		
defined	7
Acts—		
of Governor General in Council—		
earlier, to which definitions of the General		
Clauses Act, 1897 apply		39
includes an Act of the Indian legislature and		
an Act made by the Governor General as well		
as an Ordinance		66
meaning of the term "Part" with reference to		
notes on drafting of		28
of Indemnity		96
power to bind the Crown		77
presumption as to its being known to Parliament		74
re-extension or, after withdrawal, to be deemed		
re-enactment in certain cases		61
of local legislature—		
extent of powers of		50
General Clauses Act not to apply		87
history of		69
<i>ultra vires</i> , confirmation of		96
of Parliament—		
as applicable to India	68—70	
citation of	100	
Indian legislative powers derived from	77	
when they bind the Crown	77	
<i>See</i> Parliament		
Acts of Indemnity—		
form of and note on		96
Aden—		
defined		12
included in British India		10
Admiralty Cause—		
<i>See</i> Colonial Courts of Admiralty (India) Act, 1891.		
Admiralty Court—		
<i>See</i> Colonial Courts of Admiralty (India) Act, 1891		
Affidavit—		
defined		7
Amending Act—		
form of in India		24

Angul—	
application of Acts to	100
Appointment—	
made under repealed enactments to continue when enactment re-enacted	41
power to make—	
by name or <i>ex officio</i>	55
includes power to suspend or dismiss	55
Arakan Hill District—	
application of Acts to	100
Assam Act—	
defined	8
Assent copy—	
signed by Governor General constitutes authentic text of Act	41

B

Barrister—	
defined	8
Bengal Act—	
defined	6
Bengal Code—	
Regulations of	71
Bihar and Orissa Act—	
defined	9
Bombay Act—	
defined	9
Bombay Code—	
Regulations of	71
British Baluchistan—	
application of Acts to	100
British Islands—	
defined	14
British India—	
defined	9
newly acquired territory in, restriction of Acts applicable to	10
ordinarily includes territorial waters	11
British possession—	
defined	11
British territory—	
mode of cession of	10
Burma Act—	
defined	12
Bye-laws—	
construction of expressions used in	58
effect of publication in Gazette	59
in draft	59
made between passing and commencement of enactment	59

Bye-laws—*contd*

made under enactment repealed to continue when enactment re-enacted	61
power to make includes power to amend or rescind	58
provisions applicable, when subject to previous publication	59

C

Ceded territory—	
in Indian States, legislation for	80
Central Provinces Act—	
defined	19
Cession—	
always a question of fact	11
mode of	10
Chapter—	
defined	17
Chief Commissionership—	
list of	23
Chief Court—	
included in the definition of High Court	20
Citation—	
of enactments	64
how construed	64
Clause—	
distinguished from section	35
forms of in draft	100—112
meaning of the term	80
Code of Criminal Procedure 1898—	
application of provisions re levy of fines to all fines imposed under any enactment rule or bye-law	62
Codicil—	
included in the term "Will"	38
Collector—	
defined	13
known as Deputy Commissioner in non Regulation Province	13
Colonial Courts of Admiralty (India) Act 1891—	
Section 3 of re admiralty courts and admiralty causes quoted	40
Colony—	
acquired by conquest or cession legislative power over	70
definition of and discussion on the term	13 14
Commencement—	
forms of clauses relating to	103
English distinguished	103
of Act—	
of the Governor General in Council meaning of	14
of Regulation	14
rules for determining	41

Commissioner—	
meaning of	14
Confirmation—	
of Acts <i>ultra vires</i>	96
Consolidation—	
of Acts, notes on	94
some examples	96
Consular officer—	
defined	14
status of	14
Construction—	
general rules regarding—	
commencement of Acts, etc	41
commencement, termination of time	47
computation of time	43
duty taken <i>pro rata</i>	50
effect of repeal	42
gender and number	50
references to repealed enactments	47
revival of repealed enactments	46
rules as to fractions of a day	49
when Act deemed to bind Crown	77
of enactments previous to General Clauses Act, 1897	
unaffected	65
of expressions used in Notifications Rules, Order, Scheme form or bye-law	53
retrospective, of enactments and rules	44
Consular officer—	
definition of	14
"Context"—	
Scope of the expression	6
Corporations—	
successors of, application of law to	57
Customs duty—	
to be taken <i>pro rata</i>	50
Crown—	
construction of references to, in Acts and Regulations	51
form of clause binding	105
jurisdiction in Indian States	30
legislature not determined by the demise of	51
not bound by statute unless expressly or by neces- sary implication named therein	77
prerogatives of	52-54
Crown Colonies—	
analogy of Non Regulation provinces with	84
Cumulative power—	
form of clause giving	103
Cyprus—	
status of	14

D

Definitions—

application of to Acts and Regulations previous to the General Clauses Act, 1897	32
as given in the General Clauses Act 1897	6-41

Definitions— <i>contd</i>	
form of clause, in drafting	104
list of, as having retrospective effect	104
use of in drafting	105
Deputy—	
in officiating capacity mode of indicating the law applicable to as such	56
Deputy Commissioner—	
Collector known as in Non Regulation Provinces	13
Dismissal—	
power of included in the power to make appointment	55
Distance—	
measurement in a straight line	49
De regulationized tract—	
nature of	33
treatment of in extent clauses of Act	100
Discretionary power—	
clauses giving form of	92
District Judge—	
defined	14
District Board—	
a local authority	23
Duty—	
imposition of in drafting penal clauses	93
incomplete without the corresponding sanction	93
English practice distinguished	93
<i>See also</i> customs duty, excise duty	
Document—	
defined	15
service of by post meaning of	61
Drafting—	
<i>See</i> Statutory Drafting	

E

Eastern Bengal and Assam Act—	
defined	10
Enacting formula (Indian legislation)—	
corresponding English formula	100
Enactment—	
construction of rules regarding	41—51
defined	16
different classes of, in India	67
enacting formula	100
method of citation of	64
offences punishable under more than one	63
provisions re making of rules bye-laws etc between the making and commencement of	59
Excise Duty—	
to be taken <i>pro rata</i>	50
Executive Orders—	
legislation by	54

Exempting Clauses—	
example of	112
forms of	112
"Ex officio"—	
provisions regarding power to appoint as	55
"Expressly"—	
construction of the term	55
Extent clause—	
form of and note on	100
special mention in, required in case of certain de- regulationized territories	100
Extra territorial powers—	
of Acts of the Indian legislature	75
of Acts of Parliament	68
of Governor General in Council	66
F	
Father—	
defined	16
Financial year—	
defined	16
Fines—	
provisions for recovery of	62
Finger-impressions—	
relation with handwriting	39
Foreign Jurisdiction Order in Council—	
form of Notification under	113
resort to, for purposes of legislation	86
Forms—	
See Notifications, Statutory Drafting—Specimen forms	
Fractions of a day—	
rules as to	49
Fraud—	
meaning of	18
Functionaries—	
rules as to—	
.	50
.	58
power to appoint by name includes power to appoint <i>ex officio</i>	53
power to appoint includes power to suspend or dismiss	56
successors of, bound by the same relation of law .	50

G

Gazette—	
publication of Acts in no statutory obligation . . .	42
publication of rule or bye-law in, effect of . . .	59

Gender—	
rules of construction as to	50
General Clauses Act 1897—	
application of to Statutory rules	5
certain sections of applicable to Acts of local legislatures	5
objects and history of	3, 87
previous enactments saved from the provisions of	65
some provisions apply to earlier Acts	5
General definitions—	
applicable to future Acts	6—41
with retrospective effect	39—41
Good Faith—	
defined and discussed	17
Government—	
defined	19
Government of India—	
defined	19
Ilbert's <i>Parliamentary Legislation in India</i> referred to for historical survey of	20
Governor General—	
Acts made by application of the General Clauses Act to	66
Governor General in Council—	
Acts of	73
legislation by for territories in Indian States	86

H

Headings—	
utility of as a drafting device	112
High Court—	
defined	20
history and jurisdiction of chartered	20
includes Chief Court and Judicial Commissioner's Court	20
position of local legislatures as to affecting jurisdiction of	21

I

Illustrations—	
in Acts note on	14
Immovable Property—	
defined	21

"Includes"—	
distinguished from "means"	105
meaning and scope of	24
Indemnity—	
Acts of	96
to witnesses	90
India—	
defined	22
Indian legislation—	
note on drafting	87—113
Indian legislature—	
application of General Clauses Act, 1897, to Acts of	66
evolution and growth of, reviewed	71—77
power of—	
to affect the jurisdiction of High Courts	70
to bind the crown, discussed	77
wholly derived from Parliament	77
restrictions on law-making power	70—77
territorial and extra territorial powers of	74—75
Indian Penal Code—	
definition of "abet", generalised	6
"public nuisance" generalised	30
provisions <i>re</i> levy of fines to apply generally to all	
fines imposed under any enactment, rule or bye-	
law	62
Indian (Foreign Jurisdiction)—	
Order in Council 1902 making of laws under, by	
Governor General in Council	86
Indian Presidency towns Act, 1815 (55 Geo 3, = 84)—	
referred to as to Presidency-towns and history of	
the jurisdiction of old Supreme Courts	30
Indian Waters—	
fiscal and protective measures for	11
Interpretation Act 1889 (52 & 53 Viet, = 63)—	
notes on	3—4
Indian Statute Book—	
<i>See Statute Book.</i>	
"It shall be lawful"—	
meaning of the expression as a drafting device	92

J

Judge—	
<i>See District Judge</i>	
Judicial Commissioner—	
court of, included in the definition of High Court	29

L

Language—	
as used in legislation	91
Laws—	
for British India (<i>see</i> Indian Statute Book)	
State territory	86

Laws Local Extent Act, 1874—	
compared with Scheduled Districts Act, 1874 . . .	34
Legislation—	
by executive Orders for Non-Regulation Provinces .	33, 84
by reference	93
extra territorial	75
for State territory	80
historical resume of	71—77
various classes of, as embodied in the Indian Statute Book	67
Legislative Department—	
certain publications issued by	85—86
Lithography—	
included in "writing"	39
Local Authority—	
defined	23
Local Codes—	
publication of	85
Local Government—	
construction of references to, in earlier enactments after the constitution of corresponding new authority by the Government of India Act 1919	65
defined	23
form of Notification by, with previous sanction of Governor General in Council	118
list of	23
Local legislatures—	
powers of and restrictions thereon	80—81

M

Madras Act—	
defined	24
Madras Code—	
Regulations of	71
Magistrate—	
defined	24
Malacca—	
removed from British India and placed under Colonial office	12
Marginal notes—	
not an integral part of Act	93
use of, in drafting sections	89
"Mark"—	
included in "sign"	35
Masculine words—	
include feminine	80
Master (of Ship)—	
defined	25
"May"—	
distinguished from "shall"	92
effect of the word	91
"Means"—	
distinguished from "includes"	103

"Month"—	
defined	25
Movable property—	
defined	25
Municipal Committee—	
a local authority	23

N

Negligence—	
civil effects of	19
defined	18
theory and history of <i>Holmes on the Common Law</i>	
referred to	18
Non-Regulation Provinces—	
analogy with Crown Colonies	84
legislation for, by executive orders	84
meaning of	81
territories known as	84
North Western Provinces and Oudh Act—	
defined	27
Notices—	
draft clauses as to	109
Notifications—	
continuation of, when repealed enactment re-	
enacted	61
power to make includes power to amend or rescind	58
statutory, forms of	113
under Acts and Regulations construction of expres-	
sions used in	58
Nouns—	
use of, preferred to pronouns in statutory drafting .	91
Number—	
construction of singular and plural words	50

O

Oath—	
defined	27
Objects and Reasons—	
statement of, in legislation	27
Offence—	
defined	27
provision as regards punishment of, when falling	
under two or more enactments	63
Omission—	
when included in act	7
Order—	
power to make includes power to amend or rescind .	53
under Acts and Regulations construction of expres-	
sions used in	53
Orders in Council—	
as in force in India	70

Orders in Council— <i>contd</i>	
distinguished from Statutory Rules	71
relating to India	86
Ordinance—	
included in the meaning of Act	6, 66
promulgation of, and Secretary of State's Despatch relating to	79—80

P

Parliament—	
Acts of, applied to India by Indian legislation	70
Acts of, relating to India, published by the Legislative Department of the Government of India	85
application of Acts of, to Presidency-towns and Rangoon	69—70
classes of Acts of, applicable to India	68
canons of construction for determining the extra-territorial operation of Act of	68
Indian legislative powers derived from	4, 77
Part—	
meaning of, with reference to the Act or Regulation in which the term occurs	28
Penal Clause—	
See Statutory Drafting	
Perim—	
included in Aden	13
Person—	
defined	23
Lord Blackburn on the meaning of the expression	23
Personal Property—	
compared with movable property	26
Petition of Right—	
does not lie in India	54
Photography—	
included in "writing"	39
Plural Words—	
include singular	50
Political Agent—	
defined	29
does not include British Trade Agent in Tibet	29
Port Commissioners—	
body of, a local authority	23
Post—	
form of clause as to service of document by	110
meaning of service of document by	
Power—	
conferred by Act not yet in force, provision re exercise of	
conferred by Act or Regulation to be time to time	
to appoint functionaries by name incl	
appoint <i>ex officio</i>	
Preamble—	
forms of, and note on	

Presidency towns—	
application of Acts of Parliament to	70
defined	22
Previous publication—	
of rules and orders	22
Prince of Wales' Island—	
removed from British India and placed under Colonial office	12
Printing—	
included in "writing"	39
Privy Council—	
defined	30
judicial Committee of	30
Procedure—	
law relating to, on the repeal of former law .	44
Property—	
meaning of, discussed	26
Proclamations—	
applying to India	71
Prosecution—	
for offence falling under two or more enactments .	63
Protecting clause—	
form of	101
Punishment—	
for offence falling under two or more enactments	63
provision for, in drafting penal clauses in Indian legislation	93
Protection (to officers)—	
form of clause affording	107
indemnity for past acts	107
Province—	
defined	30
Provincial legislature—	
<i>See</i> Local legislature	
Proviso—	
use of, in drafting	90
Public nuisance—	
defined	30
Punjab Act—	
defined	31

R

Rangoon—	
application of Acts of Parliament to	60
Real Property—	
compared with immovable property	21
Recovery—	
of fines, general provisions for	62

Re-enactment—	
effect of on rules, notifications etc., issued under enactment repealed	61
re-extension after withdrawal of Act or Regulation to be deemed as	61
reference to repealed provisions on in certain cases	47
Reference—	
construction of to repealed enactment	47
legislation by	93
Registered —	
defined	31
Regulating Act —	
express legislative power first conferred by	71
Regulation—	
application of General Clauses Act to	40 70
defined	31
extension of to different provinces	2
has no territorial restriction	70
presumption that they are known to Parliament	74
re-extension of after withdrawal to be deemed as re-enactment	61
term for the first time confined to regulations made under 33 Vict c 3	74
under Bengal Madras and Bombay Codes the earliest extant Indian legislation	71
under 33 Vict c 3 objects and procedure discussed	72—80
Repeal—	
effect of	42
form of clause relating to	104
Repealing and Amending Act—	
notes on	97
Retrospective effect—	
of law discussed	44
Revival—	
of repealed enactments	46
Royal Prerogative—	
enumerated	52
law relating to Halsbury's <i>Laws of England</i> referred to	57 54
Royal Proclamations—	
applying to India	71
Rule—	
construction of	32
defined	32
See Statutory Rules	
Rules Publication Act 1893 (56 and 57 Vict c 66)—	
referred to re the definition of rules and bye-laws	30

S

Sanction—	
in penal clauses See Duty	
Saving—	
included in repeal	43
of enactments rules bye-laws made previous to General Clauses Act 1897	65

Saving— <i>contd.</i>	
forms of Special Saving Clause	103
Schedule—	
defined, and note on	32, 33
Maxwell and Lord Esher on the construction of	33
Scheduled Districts—	
defined	33
Scheduled Districts Act, 1874—	
objects discussed	33, 34
Section—	
defined	34
discussion <i>re</i> its history and construction as a drafting device	34, 35
distinguished from "clause"	35
drafting of	89, 90
marginal note to	90
Sentence—	
in drafting Bill	90
Service—	
by post, of document	64
"Shall"—	
distinguished from "May"	92
Ship—	
defined	35
master of, defined	25
Short titles—	
citation of enactments by	64
collective titles, when relating to the same subject matter	65
English practice of giving	65
Indian Acts conferring	65
"Sign"—	
defined	35
Singapore—	
removed from British India and placed under Colonial Office	12
Son—	
defined	37
Sonthal Parganas—	
application of Acts to	101
Sovereign—	
construction of references to, in Acts and Regulations	51
<i>See</i> Crown.	
Special Commission—	
form of Bill creating	110
Special savings—	
forms of	109
Specimen forms—	
<i>See</i> Statutory Drafting.	

Spiti, Pargana of—	
application of Acts to	101
Statement of Objects and Reasons—	
notes on	97
State territory—	
included in India	22
legislation for, where jurisdiction ceded	80
State subjects—	
extra-territorial legislation for	86
Statute Book (British India)—	
composition of	67—80
Statute Law—	
publication of	84
Statute Law Revision Act—	
known as Repealing and Amending Act in Indian	
legislation	97
notes on	97
Statutory Drafting—	
rules regarding—	
arrangement of sections	80
arrangement of the subject matter	88
consolidation	94
division into parts	89
drafting of Amending Acts	84
framing of sentences	90
illustrations in the Act	98
imposition of duty and penalty	92
languages to be adopted	91
legislation by reference	95
marginal notes to sections	88
objects and reasons, statement of	97
preliminary work—	
points for consideration in a proposed	
measure	88
procedure in case of doubtful construction .	81
provisos to section	80
"Shall" and "May", use of	92
scope and purpose of	87
specimen forms for—	
bar of civil suit	108
bar of jurisdiction of a Civil Court expressly .	109
bill creating Special Commission	110
committal	111
indemnity to witness	111
power of Commission	110
clause binding the Crown	105
commencement clause	103
enacting formula	109
exempting clauses	112
extent clause	100
interpretation clause	104

Statutory Drafting—<i>contd</i>	
specimen forms for— <i>contd</i>	
notice	109
Notification	113
preambles	99
penal clauses	111
ordinary penal clause	111
penalty for continuing breach	112
penalty for subsequent conviction	112
protecting clause	107
repealing clause	104
Rule making clause	106
Schedule	112
service of notice order or other document	110
short title	100
special saving clauses—	
cumulative power of Act	108
power to proceed under other law	108
saving clause—general	108
saving of civil remedy	108
saving of liability for nuisance	108
titles of bills	98
Statutory Notification—	
<i>See</i> Notification	
Statutory Rules Orders Bye laws etc—	
application of General Clauses Act for purposes of interpretation	5
collection of	85
construction with Act	8
continuation of under new Act	61
courts bound to take judicial notice of	41
English as in force in India	71
first Act giving power to make	83
forms of power to make	113
implied power to vary or rescind	58
making after previous publication	59
made under English Acts	82
making between passing and commencement of Act	59
repealed with the repeal of power under which made	45
skeleton forms of draft rules	113
tests of validity of	83
whether Courts may question validity of	82
Straits Settlements—	
removal from British India and placed under Colonial Office	12
Subordinates—	
covered by provision as to chiefs <i>re</i> law applicable to as such	56
Sub-section—	
defined	37
Successors—	
of functionaries and corporations relation of law how indicated	87

Suspension—		
power of, included in the power to make appointment		55
Suzerainty—		
Holland's <i>Jurisprudence</i> referred to		23
mere exercise of jurisdiction does not amount to exercise of		11
"Swear"—		
defined		37
Synonyms—		
use of, not justified in statutory drafting		91

T

Titles of Acts—		
forms of and note on		89
short titles		100
Territorial powers—		
of the Indian legislature		71
Territorial Waters—		
legislation for		75
of British India		11
Time—		
commencement and termination of		47
computation of		48
Tributary Mahals (of Orissa)—		
not included in British India		10

U

United Provinces Act—		
defined		33
Unrepealed General Acts—		
new edition of		33
Ultra Vires—		
confirmation of Acts which are		82, 96

V

Value—		
as defined in the Act of 1927		40
Vessel—		
defined		32

W

Will—		
defined		33
in English law		31
Writing—		
defined		39

Y

Year—		
meaning of		39

